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No. 82-116

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

GREATER WASHINGTON CENTRAL LABOR COUNCIL,

Petitioner,

FOOD AND ALLIED SERVICE TRADES COUNCIL OF METROPOLITAN WASHINGTON

Intervenor,

v.

DISTRICT OF COLUMBIA

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT FROM THE DISTRICT OF COLUMBIA COURT OF APPEALS

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QUESTIONS PRESENTED

Whether the unilateral act of a local legislative body violates the United States Constitution and enactments of the United States Congress when the act purports to:

(1) Abolish the jurisdiction of the United States Courts to hear appellate and enforcement procedures under the workers' compensation system established by the United States Congress for the benefit of employees of private sector District of Columbia employers; and

(2) Abolish the administrative jurisdiction of the United States Department of Labor to administer the workers' compensation system for employees of private sector District of Columbia employers.

PARTIES TO THE PROCEEDINGS

The parties to the proceeding below in the District of Columbia Court of Appeals were petitioner, The Greater Washington Central Labor Council, *et al.*; intervenor, the Food and Allied Services Trades Council of Metropolitan Washington; the respondent, District of Columbia. The Greater Washington Board of Trade's motion for intervention was denied.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

PARTIES TO THE PROCEEDINGS ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES v

JURISDICTIONAL STATEMENT 1

OPINIONS BELOW 2

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED 2

STATEMENT OF THE CASE 4

I. Legislative Background and the Administrative Process of Workers' Compensation in the District of Columbia 4

II. Limitations on the Legislative Authority of the District of Columbia City Council 6

ARGUMENT

I. A Writ of Certiorari Should Issue to Determine Whether the District of Columbia City Council Has Been Preempted from Legislating in the Area of Workers' Compensation 10

A. The Congressional Enactment of the Workers' Compensation System in the District of Columbia Preempts Local Legislation 11

B. The Workers' Compensation Act of 1979 Violates Numerous Express Provision of the Self-Government Act 16

Page

1) The New Act Violates §602(a)(8) of the Self-Government Act 16

2) The District of Columbia Workers' Compensation Act of 1979 Violates §602(a)(4) and §431(a) of the Self-Government Act 19

3) The District of Columbia Workers' Compensation Act of 1979 Violates §602(b) of the Self-Government Act 21

4) The District of Columbia Workers' Compensation Act of 1979 Violates §602(a)(3) of the Self-Government 23

CONCLUSION 26

APPENDICES

Statutory Appendix 1a

Appendix of Opinions Below 20a

TABLE OF AUTHORITIES

Cases: **Page**

Akin v. *Louisiana National Bank of Baton Rouge*, 322 F.2d 749 (5th Cir. 1963) 10

Apartment & Office Building Ass'n of Metropolitan Washington v. *Washington*, 343 A.2d 323 (D.C. App. 1975). 12

Bishop v. *District of Columbia*, 401 A.2d 955 *as modified*, 411 A.2d 997 (D.C. App. 1980) (*en banc*). 12

Capitol Hill Restoration Soc., Inc. v. *Moore*, 410 A.2d 184 (D.C. App. 1979). 12, 20

Chicago & N.W. Railway Company v. *Whitton's Administrator*, 80 U.S. (13 Wall.) 720 (1871). 10

City of Cleveland v. *Public Utilities Commission of Ohio*, 414 N.E. 2d 718 (Ohio 1980). 13

Director, Office of Workers' Compensation Programs v. National Van Lines, Inc., 613 F.2d 972 (D.C. Cir. 1979). 5, 25

District of Columbia v. *Washington Home Ownership Council*, 415 A.2d 1349 (D.C. App. 1980). 11, 15

Home Indemnity Co. v. *Stillwell*, 597 F.2d 87 (6th Cir.), *cert. denied*, 444 U.S. 869 (1979). 5

Home Insurance Co. v. *Morse*, 87 U.S. (20 Wall.) 445 (1874). 10, 11

McCulloch v. *Maryland*, 17 U.S. (4 Wheat.) 159 (1819). 13

Milhouse v. *Levi*, 548 F.2d 357 (D.C. Cir. 1976). 22

Page

Palmore v. *U.S.*,
411 U.S. 389 (1973). 11

Payne v. *Hook*,
74 U.S. (7 Wall.) 425 (1869). 10

Potomac Electric Power Company v. *Director, Office of Workers' Compensation Programs*,
449 U.S. 268 (1980). 5

Rubel Jones Agency, Inc. v. *Jones*,
165 F. Supp. 652 (W.D. Mo. 1958). 10

Terral v. *Burke Construction Co.*,
257 U.S. 529 (1922). 10

Thomas v. *Washington Gas Light Company*,
330 U.S. 469 (1980) 5

Statutes:

I. Acts of Congress

District of Columbia Self-Government and Governmental Reorganization Act of 1973, Pub. L. No. 93-198, 87 Stat. 774 ..... *im passim*

§602 ..... 7, 9, 16, 18, 19, 20, 21, 22, 23, 24
§204 ..... 13, 21
§431(a) 20

Longshoremen and Harbor Workers' Compensation Act, 44 Stat. 1427, 33 U.S.C. §§901 *et seq.* ..... *im passim*

Workmen's Compensation Law of the District of Columbia, Act of May 17, 1928, 45 Stat. 600, D.C. Code, 1973 §36-501 ..... *im passim*

Page

II. U.S. Code

33 U.S.C. §§ 901 *et seq.* ..... *im passim*
33 U.S.C. §918(a) 18
33 U.S.C. §919(b) 4
33 U.S.C. §921 ..... 17, 18
33 U.S.C. §927(b) 18

III. District of Columbia Code (1981 Ed.)

§1-233 ..... 7, 16
§11-942 19
§11-943 19
§13-302 18
§36-303 25
§36-322 ..... 17, 18
§36-501 ..... *im passim*

IV. Acts of City Council

Disrict of Columbia Workers' Compensation Act of 1979, D.C. Law 3-77 ..... *im passim*

V. United States Constitution

Article I, Section 8, Clause 17 ..... 6, 11
Article VI, Section 2 15

Other Authorities:

Home Rule for the District of Columbia, 1973-74 Background and Legislative History of H.R. 9056, H.R. 9682 and Related Bills, 93rd Cong. 2nd Sess., Vol. II, pp. 1098-99 (H.R. Comm. Print 1974). 7, 8, 9, 22

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DISTRICT OF COLUMBIA

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT FROM THE DISTRICT OF COLUMBIA COURT OF APPEALS

JURISDICTIONAL STATEMENT

The judgment of the District of Columbia Court of Appeals was entered on January 28, 1982. Petitioner Greater Washington Central Labor Council, *et al.*'s petition for rehearing *en banc* was denied on April 28, 1982. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

OPINIONS BELOW

The opinion of the Honorable John F. Doyle, Judge of the Superior Court of the District of Columbia, dated September 26, 1980, is an unreported opinion. (Appendix, p. 20a).

The opinion of the District of Columbia Court of Appeals dated January 28, 1982, is as yet unreported. (Appendix, p. 36a). The order of the District of Columbia Court of Appeals denying the petition for rehearing *en banc* was entered on April 28, 1982, and is as yet unreported. (Appendix, p. 58a)

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

I. Acts of Congress

District of Columbia Self-Government and Governmental Reorganization Act of 1973, Pub. L. No. 93-198, 87 Stat. 774.

Longshoremen and Harbor Workers' Compensation Act, 44 Stat. 1427, 33 U.S.C. §§901 *et seq.*

Workmen's Compensation Law of the District of Columbia, Act of May 17, 1928, 45 Stat. 600, D.C. Code, 1973 §36-501.

II. U.S. Code

33 U.S.C. §901 *et seq.*
33 U.S.C. §918(a)
33 U.S.C. §919(b)
33 U.S.C. §921
33 U.S.C. §927(b)

III. District of Columbia Code (1981 Ed.)

§1-233
§11-942
§11-943
§13-302
§36-303
§36-322
§36-501

IV. Acts of City Council

District of Columbia Workers' Compensation Act of 1979, D.C. Law 3-77

V. United States Constitution

Article I, Section 8, Clause 17
Article VI, Section 2

STATEMENT OF THE CASE

I. Legislative Background and the Administrative Process of Workers' Compensation in the District of Columbia

In 1928, the United States Congress enacted legislation to provide a workers' compensation system for the benefit of employees of employers doing business in the District of Columbia. Act of May 17, 1928, 45 Stat. 600; D.C. Code, 1973, §36-501 (Statutory Appendix, p. 5a). This act made the provisions of the Longshoremen's and Harbor Workers' Compensation Act, 44 Stat. 1427, 33 U.S.C. §901, *et seq.* (hereinafter "Longshore Act") (Statutory Appendix, p. 6a) applicable to workers' compensation claims brought by such employees, ". . . irrespective of the place where the injury or death occurs," D.C. Code, 1973 §36-501.

Pursuant to a Congressional mandate, the United States Department of Labor established a three-tier administrative system to handle claims brought under §36-501. Following an informal conference, the hearing examiner issues a recommendation as to the disposition of a claim. Either party may then request a formal hearing before a Department of Labor Administrative Law Judge. 33 U.S.C. §919(b) (Statutory Appendix, p. 7a). The final step in the administrative process is an appeal to the Benefits Review Board.

The entire administrative procedure involves federal employees and federal office buildings. Regulations are drafted by the Secretary of Labor, and amendments to the Longshore Act are passed from time to time by the United States Congress.

After the administrative process has been exhausted, an appeal may be pursued to the United States Court of Ap-

peals for the circuit in which the injury occurred.[1] Finally, since issues arising under §36-501 involve interpretations of federal law, unlike cases arising under the workmen's compensation laws of the various states, review in the Supreme Court of the United States is often available. *See, e.g., Potomac Electric Power Company* v. *Director, Office of Workers' Compensation Programs,* 449 U.S. 268 (1980); *Thomas* v. *Washington Gas Light Company,* 330 U.S. 469 (1980).

On April 16, 1979, the Mayor of the District of Columbia transmitted legislation to the Speaker of the House of Representatives that sought specific permission from Congress for the City Council to transfer jurisdiction of the workers' compensation system to the District of Columbia government. This bill, however, has never been acted upon.

Undaunted by Congress' refusal to grant the requisite legislative authority to establish its own private sector compensation system, the City Council drafted and enacted the District of Columbia Workers' Compensation Act of 1979 (Statutory Appendix, p. 17a). The Council took this

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[1]Since many cases brought under D.C. Code, 1973 §36-501 involve injuries received in Maryland, Virginia and the District of Columbia, the United States Court of Appeals for the Fourth Circuit and the United States Court of Appeals for the District of Columbia Circuit are often called upon to decide cases arising under the Act. Because of the broad jurisdiction encompassed by this legislation, however, each and every United States Circuit Court of Appeals may be called upon to decide a case under §36-501. For instance, if an employee of a D.C. employer were injured while on a business trip in California, the Ninth Circuit would be the appropriate circuit to hear an appeal by the claimant or employer. *Compare Home Indemnity Co.* v. *Stillwell,* 597 F.2d 87 (6th Cir.), *cert. denied,* 444 U.S. 869 *with Director, Office of Workers' Comp. Programs* v. *National Van Lines,* 613 F.2d 972 (D.C. Cir. 1979).

action in spite of legal memoranda presented by the Solicitor of Labor which concluded that the Council had no authority to replace the system administered by the federal government without an *express* grant of authority. Moreover, the Council ignored the report of its own Auditor, which concluded that the proposed legislation would not serve the interests of the District of Columbia or "of the workers, employers, or carriers and self-insurers." On May 14, 1980, the new Act was signed by the Mayor and became effective on July 1, 1980.

In essence, the new Act totally disbands a substantial segment of the United States Department of Labor; eliminates numerous federal jobs; eliminates an intermediate appeal to the Benefits Review Board; reduces or eliminates compensation benefits to many future claimants; and perhaps most significantly, transfers appellate and enforcement proceedings from the United States Courts to the Courts of the District of Columbia.

II. Limitations on the Legislative Authority of the District of Columbia City Council

Pursuant to Article I, Section 8, Clause 17 of the United States Constitution (Statutory Appendix, p. 18a), the United States Congress was given complete legislative authority over all District of Columbia affairs. Of necessity, the legislative authority of the District of Columbia government is strictly limited to whatever power Congress specifically delegates to the City Council.

A limited delegation was accomplished on December 24, 1973, when the District of Columbia Self-Government and Governmental Reorganization Act of 1973, Pub. L. No. 93-198, 87 Stat. 774 ("Self-Government Act") (Statutory Appendix, p. 1a) was enacted. The Self-Government Act,

however, contains no specific grant of authority to the District of Columbia to administer a workers' compensation system for private sector employees. In fact, Congress specifically restricted the City Council's legislative powers in §602 of the Act, which is now codified at D.C. Code, 1981 §1-233 (Statutory Appendix, p. 11a).

The legislative history of the restrictions listed in §602 is somewhat complicated due to the number of subcommittee and full committee drafts that were written before §602 finally took its ultimate form. The original bill, H.R. 9056, that was introduced in the House of Representatives on June 28, 1973, contained a §602 entitled "Limitations on the Council," which included a subsection (c) that granted the City Council and the Mayor total authority over the D.C. Court system 18 months after the Charter was approved by the electorate. This power included the right to appoint judges, to select the Chief Judge and to effect any changes in the jurisdiction or structure of the entire court system.[2]

After H.R. 9056 was sent to the Committee on the District of Columbia, Congressman Brock Adams offered amendments to §602 which were unanimously adopted by the Committee on July 24, 1973.[3] The amendments eliminated subsection (c) and modified subsection (a)(4) to eliminate any power that the City Council was to receive under the old subsection (c). In large part, the amendments were precipitated by objections to any transfer of

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[2]Home Rule for the District of Columbia, 1973-74 Background and Legislative History of H.R. 9056, H.R. 9682 and Related Bills, 93rd Cong. 2d Sess., Vol. II, p. 942 (H.R. Comm. Print 1974).

[3]Home Rule for the District of Columbia, 1973-74 Background and Legislative History of H.R. 9056, H.R. 9682 and Related Bills, 93rd Cong. 2d Sess., Vol. II, pp. 1098-99 (H.R. Comm. Print 1974).

power over the judiciary to the City Council, even with an 18-month lead-in period as proposed in the original subsection (c). Letters from Chief Judge Reilly[4] of the District of Columbia Court of Appeals and Chief Judge Greene[5] of the Superior Court voiced great concern over the loss of judicial independence if the Mayor and City Council received the powers proposed. Chief Judge Reilly stated:

> In my opinion, the provisions of the bill relating to the Nominating Commission, the Commission on Judicial Disabilities, and *the authority of the Council eventually to pass acts "affecting all aspects of such courts"* severely impair the insulation from political pressures which the Judicial Reorganization Act of 1970 sought to bring about. [emphasis added].

Chief Judge Greene stated his objection more emphatically. After criticizing the proposed authority of the Mayor to appoint judges to the District of Columbia Court of Appeals and Superior Court, on the grounds that H.R. 9056 (the original draft of the Self-Government Act) did not confer statehood, he stated:

> , Similar considerations apply to provisions in the bill which would grant authority to the Council to pass acts "affecting all aspects of [the] courts", apparently including their "structure, organization, [and] jurisdiction." This grant of authority to a city council with respect to a court of general jurisdiction would appear to be unprecedented in the United States.

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[4] *Id.* pp. 1416-18.
[5] *Id.* pp. 1418-24.

Thereafter, the full committee adopted Chief Judge Greene's recommendations with respect to §602(c), as well as many changes to Article IV.[6]

Subsections (a)(3), (a)(5) and (b) remained unchanged except that subsection (a)(5) was renumbered (a)(8).

Section 602, in its amended form (Statutory Appendix, p. 2a), was then reported by the Committee along with the rest of the Act to the House of Representatives as H.R. 9682. Section 602 of the ultimately enacted Public Law remains essentially identical to the version reported by the full committee.

The limitations stated in §602 are express restrictions on the City Council. The Self-Government Act did not and could not grant full statehood to the District. Many of the subsections probably are not necessary in light of the Supremacy Clause of the United States Constitution, but the fact that Congress felt compelled to include §602 in the Self-Government Act only leads to the conclusion that Congress was very concerned with the possible abuses of legislative authority that the City Council might engage in.

This legislative history and a complete understanding of the current workmen's compensation system led the District of Columbia Superior Court to conclude that the new Act violated a number of express restrictions in §602, and to enter a declaratory judgment that the new Act was null and void (Appendix, p. 20a). A three-judge panel of the District of Columbia Court of Appeals reversed the Superior Court (Appendix, p. 36a). The Court split evenly on the Petition for Rehearing *En Banc,* thus affirming the panel decision (Appendix, p. 59a). Judge Belson, however,

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[6] *Id.* pp. 1424-25.

expressed concern over the failure of the panel to fully address the effect of the new Act on the federal court system.

ARGUMENT

I. A Writ of Certiorari Should Issue to Determine Whether the District of Columbia City Council Has Been Preempted from Legislating in the Area of Workers' Compensation.

> I favor rehearing *en banc* in this case. The plain fact is that the District of Columbia Workers' Compensation Act of 1979 has effectively transferred a class of cases from the federal courts to the District of Columbia courts.
>
> Associate Judge Belson's Statement on Petition for Rehearing *En Banc*

Judge Belson's clear and irrefutable statement that the new Act transfers "a class of cases" from the federal courts to the D.C. local courts is, in short, all that needs to be said to conclude that the District of Columbia City Council grossly abused its limited legislative authority when it passed the District of Columbia Workers' Compensation Act of 1979. Any unilateral act by a state or local government that purports to reduce the power of the federal courts necessarily constitutes a flagrant violation of our federal system of governments. *See, Terral* v. *Burke Construction Company,* 257 U.S. 529 (1922); *Home Insurance Co.* v. *Morse,* 87 U.S. (20 Wall.) 445 (1874); *Chicago & N.W. Railway Company* v. *Whitton's Administrator,* 80 U.S. (13 Wall.), 7820 (1871); *Payne* v. *Hook,* 74 U.S. (7 Wall.) 425 (1869); *Akin* v. *Louisiana National Bank of Baton Rouge,* 322 F.2d 749 (5th Cir. 1963); *Rubel Jones Agency, Inc.* v. *Jones,* 165 F.Supp. 652 (W.D. Mo. 1958).

It is a basic principle of our system that "state legislation cannot confer jurisdiction upon the federal courts, nor can it limit or restrict the authority given by Congress in pursuance of the Constitution." *Home Insurance Company, supra,* at 453. Transferring jurisdiction of workers' compensation claims to the District of Columbia local courts is a blatant attempt by the City Council to remove from the federal courts a class of cases explicity delegated to them by Congress through D.C. Code, 1973, §36-501.

Not only was the City Council denied the express authority it originally sought from Congress to effect this transfer, it is expressly prohibited from enacting such legislation by the United States Constitution and the Self-Government and Governmental Reorganization Act. This legislative abuse can only be rectified by the issuance of a Writ of Certiorari.

A. The Congressional Enactment of the Workers' Compensation System in the District of Columbia Preempts Local Legislation.

The Constitution of the United States, Article I, Section 8, Clause 17, vests in Congress an exclusive plenary power to legislate for the District of Columbia. *See, Palmore* v. *U.S.*, 411 U.S. 389 (1973). Congress may employ any necessary and proper means to fulfill this duty, including the delegation of certain self-governmental authority to the local government. Accordingly, the District of Columbia Self-Government and Governmental Reorganization Act of 1973, Pub. L. No. 93-198, 87 Stat. 774 ("Self Government Act") conferred a limited scope of legislative authority upon the City Council of the District of Columbia. *See, District of Columbia* v. *Washington Home Ownership Council,* 415 A.2d 1349 (D.C. App. 1980)

(emergency legislation held invalid after 180-day period); *Bishop* v. *District of Columbia*, 401 A.2d 955, *as modified*, 411 A.2d 997 (D.C. App. 1980) (*en banc*) (professional tax invalid exercise of legislative authority under Home-Rule Act); *Capitol Hill Restoration Soc., Inc.* v. *Moore*, 410 A.2d 184 (D.C. App. 1979) (City Council's attempt to expand jurisdiction of D.C. Court of Appeals held to exceed Home Rule Act legislative authority); *Apartment & Office Building Assn'n of Metropolitan Washington* v. *Washington*, 343 A.2d 323 (D.C. App. 1975) (rent control regulations held to exceed legislative authority under the District of Columbia Rent Control Act of 1973, D.C. Code §45-1622).

The City Council has absolutely no inherent legislative authority; it may only exercise those legislative powers that are explicitly delegated to it by the Self-Government Act. The Mayor and the City Council are ". . . mere agents of the Congress" having "only such authority to promulgate regulations as the Congress has specifically vested in them in any given field." *Id.* at 329. Any areas of legislative authority not explicitly delegated to the City Council by the Act are necessarily reserved exclusively for Congressional action. Any attempt by the City Council to legislate in such an area is beyond the limited power delegated to that body, and therefore invalid, and is, of course, preempted by virtue of the Supremacy Clause of the United States Constitution.

The vital question to be addressed in this case is whether Congress intended to delegate the authority to create workers' compensation legislation to the City Council, or to exclusively occupy this field of regulation itself. Ordinarily, the issue of preemption arises when a state attempts to regulate a subject that is forbidden to it because "there is explicit or implicit exclusion of state regulation by Con-

gress." *City of Cleveland* v. *Public Utilities Commission of Ohio,* 414 N.E.2d 718, 720 (Ohio 1980). When Congress is acting within an area that is delegated to it by the Constitution, and state legislation poses an obstacle to the accomplishment of Congressional purposes and objectives, state law is preempted by virtue of the Supremacy Clause; "the government of the Union though limited in its powers is supreme within its sphere of action." *McCulloch* v. *Maryland,* 17 U.S. (4 Wheat.) 159, 199 (1819).

The situation is somewhat different when the legislation in question is enacted not by a state, but by the City Council of the District of Columbia. A state government is endowed with inherent legislative authority, and preemption occurs only when Congress takes steps to exclude certain areas from the reach of the state legislature. The District of Columbia City Council, on the other hand, has only such legislative authority as it is given by Congress by virtue of the Self-Government Act. If the Act does not include a delegation of authority over workers' compensation, then this lack of delegation is in itself the manifestation of Congress' intent to occupy the area itself, for any legislative authority not granted to the Council necessarily remains exclusively the province of Congress.

The limitations within the Self-Government Act on the City Council's legislative power, along with the fact that at the time the Act was passed Congress left existing federal legislation regarding workers' compensation for the District of Columbia private sector intact, clearly indicate that Congress had no intention of transferring authority over this area of regulation to the local government. Specific provisions were made in Title 2, §204 (Statutory Appendix, p. 1a) of the Act to transfer certain federal functions regarding D.C. public employment services, including workmen's compensation for government employees,

from the U.S. Department of Labor to the District of Columbia government. There is absolutely no mention, however, of transferring authority over the private sector workers' compensation program to the City Council.

Congress' express transfer of certain functions of the Labor Department creates a strong inference of a Congressional intent to leave the status of the private sector workers' compensation program unchanged. Had Congress intended to effectuate a transfer of the workers' compensation program, it certainly could have done so by repealing the 1928 Workmen's Compensation Act and granting the District City Council the power to enact its own workers' compensation legislation. This was not done. By not delegating authority to the Council to legislate in this area, and by not repealing 36 D.C. Code §501, Congress retained exclusive legislative authority over this subject.

In spite of a memorandum to the City Council from the Assistant Secretary of the Department of Labor, in February of 1980, warning that the Self-Government Act did not confer such legislative authority, the Council proceeded to pass its own Workers' Compensation Act which removes this subject from the U.S. Department of Labor and the federal courts, and confers it upon a local administrative agency and the District of Columbia courts.

The new Workers' Compensation Act is not only utterly incompatible with the existing federal legislation, but it purports to repeal the federal statute. The City Council has no authority to legislate in the area of workers' compensation at all, let alone repeal a Congressional enactment. That the City Council would presume to overstep the bounds of its limited authority to such an extent is preposterous, and makes a mockery of the doctrine of preemption, as well as the entire theory of federal supremacy,

embodied in Article VI, ¶2 of the United States Constitution.

While the City Council claims that it has the requisite authority, by virtue of the Self-Government act, "it begs the question to say that the Council's own interpretation of the Home Rule Act should be presumed valid. The Council itself is the result, not the initiator, of the Home Rule Act . . ." *District of Columbia* v. *Washington Home Ownership Council, supra,* at 1351, n. 5.

It is self evident that the actions of the City Council are not justified by the Self-Government Act, that the Council's Workers' Compensation Act is in direct conflict with existing federal legislation, and that Congressional enactments must prevail over state or local regulations that conflict with them.

The City Council of the District of Columbia has attempted to repeal a Congressional statute, and remove a class of cases from the jurisdiction of the federal courts. A local legislative body must not be allowed to thus flaunt the fundamental premise of supremacy that underlies our federal system. By passing the new Workers' Compensation Act, the Council has displayed a remarkable degree of indifference toward the United States Constitution and enactments of the United States Congress in pursuance of a Constitutional mandate. A writ of certiorari must issue in order to firmly re-establish that the City Council is a body of limited authority and, more importantly, that the jurisdiction of the federal courts is not, and cannot be, the subject of state or local limitation.

B. The Worker's Compensation Act of 1979 Violates Numerous Express Provisions of the Self-Government Act

Aside from the patent constitutional violations, the new Act violates numerous express provisions of the Self-Government Act. Simply stated, the new Act affects the jurisdiction of the federal courts, leading to the unavoidable conclusion that it exceeds the legislative power granted to the City Council in the Self-Government Act.

Moreover, the new Act also affects the jurisdiction of the District of Columbia Courts, as well as the powers and authority of the United States Department of Labor. Additionally, it affects matters not exclusively within the District of Columbia. The new legislation thus violates several independent express restrictions contained in the Self-Government Act.

1) The New Act Violates §602(a)(8) of the Self-Government Act

Section 602(a)(8) of the Self-Government Act, now codified at D.C. Code, 1981, §1-233(a)(8), states that the City Council has no authority to:

> enact any act or regulation relating to the United States District Court for the District of Columbia or any other court of the United States in the District other than the District Courts, or relating to the duties or powers of the United States Attorney or the United States Marshal for the District of Columbia.

This subsection encompasses four distinct legislative limitations, absolutely prohibiting interference with (1) the United States Court of Appeals for the District of Columbia Circuit; (2) the United States District Court for the District of Columbia; (3) the United States Attorney; and

(4) the United States Marshal. As demonstrated below, the District of Columbia Workers' Compensation Act of 1979 violates three of the four limitations.

Section 23(b)(3) of the new Act, codified at D.C. Code, 1981 § 36-322(b)(3) (Statutory Appendix, p. 16a), requires an appellant to seek review of compensation orders entered by the Mayor in the District of Columbia Court of Appeals under the District of Columbia Administrative Procedure Act, D.C. Code, 1978 Supp. §1-1501, *et seq.* Of necessity, the provision repeals the jurisdiction of the United States Court of Appeals, 33 U.S.C. §921(c) (Statutory Appendix, p. 9a), and thus constitutes an "act or regulation related to . . . [a] United States Court."

The District of Columbia has stated that the effect of the new Act is "simply to reduce the number of cases the United States Court of Appeals will review under the Longshoremen's Act." This statement is totally fallacious. When the United States Court of Appeals hears a case involving an injury to an employee of a private sector District of Columbia employer, it is *not* hearing a Longshore Act case. It is hearing a workers' compensation case arising under §36-501, *not* 33 U.S.C. §901, *et seq.* (Statutory Appendix, p. 6a). The new Act proposes to eliminate the power that the United States Court of Appeals has to review *any* case under §36-501. This is just as preposterous as if the City Council were to attempt to remove the United States Court of Appeals' jurisdiction under Title VII of the Civil Rights Act, the Freedom of Information Act or any other federal statute. Congress wrote §36-501 specifically intending appellate review to be in the United States Circuit Courts of Appeal, and, as discussed above, the City Council clearly has no authority to alter this provision.

Concurrently, §23(c) of the new Act, codified at D.C. Code, 1981, § 36-322(c) (Statutory Appendix, p. 17a), requires that all attempts to enforce compensation orders be filed in the Superior Court of the District of Columbia. This provision repeals the jurisdiction of the United States District Court to enforce orders under §36-501. Thus, the new Act also violates the second restriction listed in §602(a)(8).

Three sections of the Longshore Act, § 918(a), § 921(d), and § 927(b) (Statutory Appendix, pp. 6a, 10a), provide methods of enforcement in the United States District Courts against employers who default on compensation orders. Since these provisions of the Longshore Act are made applicable to the District of Columbia employers by D.C. Code, 1973, §36-501, it is irrefutable that the proposed change in jurisdiction from the United States District Courts to the Superior Court is an "act or regulation relating to the United States District Court . . ." and thus violates a second restriction of § 602(a)(8). To conclude otherwise necessarily ignores the legislative foundation upon which the current compensation system rests.

The new Act also violates the third restriction in §602(a)(8) because it limits the ability of the United States Marshal to effect service of orders, writs and processes "anywhere in the United States" under §21(c) of the Longshore Act. 33 U.S.C. §921(c) (Statutory Appendix, p. 9a). Since the new Act contemplates a local compensation system, nationwide service would not be permitted and, thus, the power of the United States Marshal would be restricted. While it is true that the United States Marshal now serves process for District of Columbia Court actions, D.C. Code, 1973, §13-302 (Statutory Appendix, p. 12a), their jurisdiction in those civil cases pursuant to

D.C. Code, 1973, §§11-942-43 (Statutory Appendix, p. 11a) is severely limited.

2) The District of Columbia Workers' Compensation Act of 1979 Violates §602(a)(4) and §431(a) of the Self-Government Act

Just as the new Act repeals the jurisdiction of the United States Courts, it necessarily increases the jurisdiction of the District of Columbia Courts. This action contravenes the explicit restriction in §602(a)(4) of the Self-Government Act (Statutory Appendix, p. 2a), which prohibits the City Council from affecting the jurisdiction of the District of Columbia Courts. As described in the *Statement of the Case, supra,* the original draft of the Self-Government Act was highly criticized because of its provision for City Council control over the District's judiciary. This criticism led to the blanket restriction encompassed in §602(a)(4). *See,* Home Rule for the District of Columbia, *supra,* p. 1076.

The District of Columbia has argued that since the D.C. Court of Appeals already has jurisdiction to hear cases under the D.C. Administrative Procedure Act, the transfer does not affect the jurisdiction of the Court of Appeals. It only increases the number of cases that the Court will hear under the D.C. Administrative Procedure Act. While it is true that the number of cases the Court will have to hear will dramatically increase,[7] it is also true that

[7]There are now approximately 200 pending appeals from Administrative Law Judge decisions to the Benefits Review Board of claims arising under §36-501. As described above, since the new Act eliminates an intermediate level appeal from a decision entered by the Mayor, the D.C. Court of Appeals would be called upon to hear all appeals of compensation claims. Since the new Act makes a number of drastic changes, the number of appeals to clarify the many ambiguous sections of the new Act will be staggering.

the Court will be hearing cases that it currently has no jurisdiction to hear. Thus, by definition, when the D.C. Court of Appeals hears its first workers' compensation appeal, it will be increasing its jurisdiction.

Moreover, the new Act also provides that the Superior Court will be empowered to enter enforcement orders and judgments. Nothing in the D.C. Administrative Procedure Act grants any jurisdiction to the Superior Court to enforce administrative orders. Furthermore, §431(a) of the Self-Government Act (Statutory Appendix, p. 1a) *specifically excludes* compensation matters from the jurisdiction of the Superior Court. That section states, *inter alia:*

> . . . The Superior Court has no jurisdiction over any civil or criminal matter over which a United States Court has exclusive jurisdiction pursuant to an Act of Congress. . .

Since enforcement of compensation orders is within the exclusive jurisdiction of the United States District Courts, compensation matters are outside the jurisdiction of the Superior Court. As a result, any attempt to give the Superior Court such jurisdiction must necessarily increase its current jurisdiction. Thus, any attempt to place such authority in the Superior Court also violates the express wording of § 602(a)(4) and § 431(a).

A similar endeavor to increase the jurisdiction of the D.C. Court of Appeals was ruled invalid in *Capitol Hill Restoration Soc., Inc.* v. *Moore, supra.* In that case, the City Council attempted to grant appellate review of administrative decisions in non-contested cases. The Court concluded that due to the limitations embodied in §602 (a)(4), the City Council was without authority to give the Court the power to review the case. The City Council's attempt in this case to grant the District of Columbia courts

jurisdiction over a class of cases that they are currently forbidden to hear is precisely analogous to the actions of the Council that were held invalid in *Capitol Hill Restoration.*

3) The District of Columbia Workers' Compensation Act of 1979 Violates §602(b) of the the Self-Government Act

The City Council has exceeded its legislative authority in yet another way. Section 602(b) (Statutory Appendix, p. 3a) clearly prohibits the District of Columbia from exercising "any greater authority" over any federal agency than was exercised by the Commissioner of the District prior to January 2, 1975.

It is unquestionable that the United States Department of Labor is a federal agency; it is also unquestionable that the Commissioner of the District of Columbia had no authority over the Department of Labor prior to January 2, 1975. Thus, it is equally unquestionable that any attempt to withdraw compensation claims from the jurisdiction of the Department of Labor constitutes an invalid exercise of authority by the City Council over a federal agency.

If Congress had wanted the District to have authority over compensation claims arising under §36-501, they could have provided for it expressly, just as they did for government employee compensation claims in §204(e) of the Self-Government Act. This was not done, even in light of the plea from the Secretary of Labor, Peter J. Brennan. In a letter addressed to the Honorable Archer Nelson dated October 24, 1973, the Secretary states:

> . . . We favor amendment of the bill [Self-Government Act] to transfer administration of the

> District of Columbia Compensation Act [§36-501] to the D.C. government. As you know, this law applies to private employment in the District.[8]

Given the clear and unequivocal restrictions of §602(b), an express transfer of authority by Congress, as proposed by Secretary Brennan, is the only way for the City Council to obtain jurisdiction over private sector compensation claims.

The only reasonable inference from Congress' failure to act upon the Secretary's request when the opportunity arose is that Congress desired to maintain control over private sector compensation claims. The well-known rule of legislative interpretation, "inclusio unius est exclusio alterius", clearly applies in this situation, even without §602(b). The United States Court of Appeals for the District of Columbia Circuit has applied similar reasoning to reach the conclusion that Congress' failure to provide for an express change in the Attorney General's authority over the Lorton Reformatory furlough program was a clear indication that Congress did not desire such a change. *Milhouse* v. *Levi,* 548 F.2d 357, 363 (D.C. Cir. 1976). The Court stated:

> Congress, in enacting both the Court Reform Act and the Home Rule Act, did not amend any of the provisions under which the Attorney General has regulated the furlough program at the Lorton Reformatory. In light of the long-standing practice in this regard, any assumption that failure to amend was due to inadvertence as distinguished from design would be to ignore the

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[8]Home Rule for the District of Columbia, *supra,* p. 3559.

> meticulous care Congress exhibited in conforming other statutory provisions to its legislative scheme for the District of Columbia [footnote omitted]. In short, if Congress had intended to alter the nature of the Attorney General's control over the Lorton furlough program, same could have been done by express provision.

This case raises precisely the same situation; the subject of workers' compensation was clearly before the Congress, but only public sector claims were transferred. This reasoning, in conjunction with the specific limitations in the wording of §602(b), leaves little question that Congress desired to maintain control of private sector claims.

4) The District of Columbia Workers' Compensation Act of 1979 Violates §602(a)(3) of the Self-Government Act

The new Act also exceeds legislative limitations imposed on the City Council by §602(a)(3) (Statutory Appendix, p. 2a). The District of Columbia has attempted to show that workers' compensation is a "local" function and thus not the type of federal function that is prohibited by §602 (a)(3). Among the restrictions included in this section, however, is the provision that the City Council has no authority to:

> . . . amend or repeal any Act of Congress, which concerns the functions or property of the United States or which is not restricted in its application exclusively in or to the District.

The new Act violates several limitations contained in §602 (a)(3).

This section states that the City Council cannot amend or repeal an act which concerns "the functions . . . of the United States". While it is true that workers' compensation in the various states is a matter controlled by state law, that does not, *ipso facto,* mean that workers' compensation in the District of Columbia is not a function of the United States.

In addition to the Longshore Act, the federal government has enacted and operated workers' compensation programs of various types for many years, including the Defense Base Act; the War Hazards Act; and the Outer Continental Shelf Lands Act. Each is wholly administered by the federal government.

As noted *supra,* every aspect of the compensation system for employees of private sector District of Columbia employers is a federal function. The program is operated by federal employees in federal office buildings. Regulations are drafted by the Department of Labor, and appeals are handled by federal judges. Although compensation is a state function in the various states, in the District of Columbia compensation has always been a function of the United States Department of Labor and the Congress. Until Congress specifically delegates the private sector compensation system to the City Council, it must remain a function of the United States.

Section 602(a)(3) also prohibits the enactment of legislation pertaining to matters not exclusively within the District of Columbia. Since the jurisdiction of §36-501 is so broad as to cover the rights of an employee who is not a resident of the District of Columbia, it is obvious that repealing §36-501 affects matters not exclusively within the District.

A recent decision by the United States Court of Appeals for the District of Columbia Circuit illustrates the breadth

of §36-501; *Director, Office of Workers' Compensation Programs* v. *National Van Lines, Inc.*, 613 F.2d 972 (D.C. Cir. 1979). In that case, an employee was severely injured in the State of New York. The employee was a resident of Virginia and the employer's principal place of business was in Virginia. The Court, however, upheld the Benefits Review Board determination that the injury was compensable under §36-501. The Court pointed only to the fact that the employee had occasional duties in the District of Columbia and that the employer did business in the Washington metropolitan area. The Court stated:

> For most practical purposes, it makes little difference to the parties or to the jurisdictions, in the context of the policies behind the Act, precisely where the home or headquarters is. The most significant geographical division is the metropolitan Washington area.

National Van Lines, supra, at p. 979.

When this broad jurisdictional grant is compared to the jurisdiction proposed under the new Act, it becomes clear that many individuals who are not residents of the District of Columbia will be affected. Section 4(a) of the new Act, codified at D.C. Code, 1981, § 36-303, requires that the employment be "principally localized" in the District of Columbia (Statutory Appendix, p. 13a). Thus, many workers now covered by §36-501 will be deprived of federal benefits. Furthermore, the jurisdiction of the United States Court of Appeals in each of the Circuits will also be affected if §36-501 is repealed since, as described above, each Circuit presently has jurisdiction to hear §36-501 claims if the injury occurs in the geographical area covered by the Circuit.

CONCLUSION

It is submitted that the District of Columbia Workers' Compensation Act of 1979 violates constitutional restrictions on local governments and far exceeds the legislative authority granted to the City Council under the Self-Government Act. Each limitation on the authority of the Council is an independent restriction, and a violation of any one of these provisions would be sufficient to invalidate the new Act.

Wherefore, the Greater Washington Central Labor Council, Robert E. Petersen, Joslyn Williams and William Saunders, respectfully submit the Petition for a Writ of Certiorari be granted.

Respectfully submitted,

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STATUTORY APPENDIX

I. Acts of Congress

A. District of Columbia Self-Government and Governmental Reorganization Act, 93-198, 87 Stat. 774

1. Section 204(e), now codified in Volume 1, page 185, of the 1981 District of Columbia Code

(e) All functions of the Secretary under chapter 81 of title 5 of the United States Code, with respect to the processing of claims filed by employees of the government of the District for compensation for work injuries, are transferred to and shall be exercised by the Commissioner, effective the day after the day on which the District establishes an independent personnel system or systems.

2. Section 431(a), now codified in Volume 1, page 195, of the 1981 District of Columbia Code

Sec. 431. (a) The judicial power of the District is vested in the District of Columbia Court of Appeals and the Superior Court of the District of Columbia. The Superior Court has jurisdiction of any civil action or other matter (at law or in equity) brought in the District and of any criminal case under any law applicable exclusively to the District. The Superior Court has no jurisdiction over any civil or criminal matter over which a United States court has exclusive jurisdiction pursuant to an Act of Congress. The Court of Appeals has jurisdiction of appeals from the Superior Court and, to the extent provided by law, to review orders and decisions of the Mayor, the Council, or any agency of the District. The District of Columbia

courts shall also have jurisdiction over any other matters granted to the District of Columbia courts by other provisions of law.

3. Section 602, now codified at Section 1-233 of the District of Columbia Code (1981 Ed.)

Sec. 602 (a). The Council shall have no authority to pass any act contrary to the provisions of this Act except as specifically provided in this Act, or to—

(1) impose any tax on property of the United States or any of the several States:

(2) lend the public credit for support of any private undertaking;

(3) enact any act, or enact any act to amend or repeal any Act of Congress, which concerns the functions or property of the United States or which is not restricted in its application exclusively in or to the District;

(4) enact any act, resolution, or rule with respect to any provision of title 11 of the District of Columbia Code (relating to organization and jurisdiction of the District of Columbia courts);

(5) impose any tax on the whole or any portion of the personal income, either directly or at the source thereof, of any individual not a resident of the District (the terms "individual" and "resident" to be understood for the purposes of this paragraph as they are defined in section 4 of title I of the District of Columbia Income and Franchise Tax Act of 1947);

(6) enact any act, resolution, or rule which permits the building of any structure within the District of Columbia in excess of the height limitations contained in section 5 of the Act of June 1, 1910 (D.C. Code. sec. 5-405), and in effect on the date of enactment of this Act;

(7) enact any act, resolution, or regulation with respect ot the Commission on Mental Health;

(8) enact any act or regulation relating to the United States District Court for the District of Columbia or any other court of the United States in the District other than the District courts, or relating to the duties or powers of the United States attorney or the United States Marshal for the District of Columbia; or

(9) enact any act, resolution, or rule with respect to any provision of title 23 of the District of Columbia Code (relating to criminal procedure), or with respect to any provision of any law codified in title 22 or 24 of the District of Columbia Code (relating to crimes and treatment of prisoners) during the twenty-four full calendar months immediately following the day on which the members of the Council first elected pursuant to this Act take office.

(b) Nothing in this Act shall be construed as vesting in the district government any greater authority over the National Zoological Park, the National Guard of the District of Columbia, the Washington Aqueduct, the National Capital Planning Commission, or except as otherwise specifically provided in this Act, over any Federal agency, than was vested in the Commissioner prior to the effective date of title IV of this Act.

(c)(1) Except acts of the Council which are submitted to the President in accordance with the Budget and Accounting Act, 1921, any act which the Council determines according to section 412(a) should take effect immediately because of emergency circumstances, and acts proposing amendments to title IV of this Act, the Chairman of the Council shall transmit to the Speaker of the House of

Representatives, and the President of the Senate a copy of each act passed by the Council and signed by the Mayor, or vetoed by the Mayor and repassed by two-thirds of the Council present and voting (and with respect to which the President has not sustained the Mayor's veto), and every act passed by the Council and allowed to become effective by the Mayor without his signature. Except as provided in paragraph (2), no such act shall take effect until the end of the 30-day period (excluding Saturdays, Sundays, and holidays, and any day on which either House is not in session) beginning on the day such act is transmitted by the Chairman to the Speaker of the House of Representatives and the President of the Senate and then only if during such 30-day period both Houses of Congress do not adopt a concurrent resolution disapproving such act. The provisions of section 604, except subsections (d), (e) and (f) of such section, shall apply with respect to any concurrent resolution disproving any act pursuant to this paragraph.

(2) In the case of any such act transmitted by the Chairman with respect to any Act codified in titles 22, 23 or 24 of the District of Columbia Code, such act shall take effect at the end of the 30-day period beginning on the day such act is transmitted by the Chairman to the Speaker of the House of Representatives and the President of the Senate only if during such 30-day period one House of Congress does not adopt a resolution disapproving such act. The provisions of section 604, relating to an expedited procedure for consideration of resolutions, shall apply to a simple resolution disapproving such act as specified in this paragraph.

B. Longshoremen and Harbor Workers' Compensation Act, 44 Stat. 1427 (33 U.S.C. §§ 910 *et seq.).*

C. Workmen's Compensation Law of the District of Columbia, Act of May 17, 1928, 45 Stat. 600 (D.C. Code, 1973 § 36-501).

DISTRICT OF COLUMBIA WORKMEN'S COMPENSATION ACT

[*Public*—No. 419—70th *Congress, Passed May* 17, 1928, *As Amended*]

[*S.* 3565]

An Act To provide compensation for disability or death resulting from injury to employees in certain employments in the District of Columbia, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT MADE APPLICABLE TO DISTRICT OF COLUMBIA

The provisions of the Longshoremen's and Harbor Workers' Compensation Act, including all amendments that may hereafter be made thereto, shall apply in respect to the injury or death of an employees or an employer carrying on any employment in the District of Columbia, irrespective of the place where the injury or death occurs; except that in applying such provisions the term "employer" shall be held to mean every person carrying on any employment in the District of Columbia, and the term "employee" shall be held to mean every employee of any such person.

SECTION 2. EXCEPTIONS

This Act shall not apply in respect to the injury or death of (1) a master or member of a crew of any vessel; (2) an employee of a common carrier by railroad when engaged in interstate or foreign commerce or commerce solely within the District of Columbia; (3) an employee subject to the provisions of the Federal Employees' Compensation Act, as amended (Title 5, U.S.C., 751); and (4) an employee engaged in agriculture, domestic service, or any employment that is casual and not in the usual course of the trade, business, occupation, or profession of the employer; and (5) any secretary, stenographer, or other person performing any services in the office of any Member of Congress or under the direction, employment, or at the request of any Member of Congress, within the scope of the duties performed by secretaries, stenographers, or such employees of Members of Congress.

II. U.S. Code

A. Longshoremen and Harbor Workers' Compensation Act, 33 U.S.C. § 901 *et seq.*

1. 33 U.S.C. § 918(a)

DEFAULTED PAYMENTS

Section 18.(a) In case of default by the employer in the payment of compensation due under any award of compensation for a period of thirty days after the compensation is due and payable, the person to whom such compensation is payable may, within one year after such default, make application to the deputy commissioner making the compensation order or a supplementary order declaring the amount of the default. After investigation, notice, and

hearing, as provided in section 19, a deputy commissioner shall make a supplementary order, declaring the amount of the default, which shall be filed in the same manner as the compensation order. In case the payment in default is an installment of the award, the deputy commissioner may, in his discretion, declare the whole of the award as the amount in default. The applicant may file a certified copy of such supplementary order with the clerk of the Federal district court for the judicial district in which the employer has his principal place of business or maintains an office, or for the judicial district in which the injury occurred. In case such principal place of business or office or place where the injury occurred is in the District of Columbia, a copy of such supplementary order may be filed with the clerk of the United States District Court for the District of Columbia. Such supplementary order of the deputy commissioner shall be final, and the court shall upon the filing of the copy enter judgment for the amount declared in default by the supplementary order if such supplementary order is in accordance with law. Review of the judgment so entered may be had as in civil suits for damages at common law. Final proceedings to execute the judgment may be had by writ of execution in the form used by the court in suits at common law in actions of assumpsit. No fee shall be required for filing the supplementary order nor for entry of judgment thereon, and the applicant shall not be liable for costs in a proceeding for review of the judgment unless the court shall otherwise direct. The court shall modify such judgment to conform to any later compensation order upon presentation of a certified copy thereof to the court.

2. 33 U.S.C. § 919(b)

(b) Within ten days after such claim is filed the deputy commissioner, in accordance with regulations prescribed by the Secretary, shall notify the employer and any other person (other than the claimant), whom the deputy commissioner considers an interested party, that a claim has been filed. Such notice may be served personally upon the employer or other person, or sent to such employer or person by registered mail.

3. 33 U.S.C. § 921

Sec. 921. (a) A compensation order shall become effective when filed in the office of the deputy commissioner as provided in section 19, and, unless proceedings for the suspension or setting aside of such order are instituted as provided in subdivision (b) of this section, shall become final at the expiration of the thirtieth day thereafter.

(b)(1) There is hereby established a Benefits Review Board which shall be composed of three members appointed by the Secretary from among individuals who are especially qualified to serve on such Board. The Secretary shall designate one of the members of the Board to serve as chairman.

(2) For the purpose of carrying out its functions under this Act, two members of the Board shall constitute a quorum and official action can be taken only on the affirmative vote of at least two members.

(3) The Board shall be authorized to hear and determine appeals raising a substantial question of law or fact taken by any party in interest from decisions with respect to claims of employees under this Act and the extensions thereof. The Board's orders shall be based upon the hearing record. The findings of fact in the decision under review by the Board shall be conclusive if supported by

substantial evidence in the record considered as a whole. The payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless ordered by the Board. No stay shall be issued unless irreparable injury would otherwise ensue to the employer or carrier.

(4) The Board may, on its own motion or at the request of the Secretary, remand a case to the hearing examiner for further appropriate action. The consent of the parties in interest shall not be a prerequisite to a remand by the Board.

(c) Any person adversely affected or aggrieved by a final order of the Board may obtain a review of that order in the United States court of appeals for the circuit in which the injury occurred, by filing in such court within sixty days following the issuance of such Board order a written petition praying that the order be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court, to the Board, and to the other parties, and thereupon the Board shall file in the court the record in the proceedings as provided in section 2112 of title 28, United States Code. Upon such filing, the court shall have jurisdiction of the proceeding and shall have the power to give a decree affirming, modifying, or setting aside, in whole or in part, the order of the Board and enforcing same to the extent that such order is affirmed or modified. The orders, writs, and processes of the court in such proceedings may run, be served, and be returnable anywhere in the United States. The payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless ordered by the court. No stay shall be issued unless irreparable injury would otherwise ensue to the employer or carrier. The order of the court allowing any stay shall contain a specific finding, based

upon evidence submitted to the court and identified by reference thereto, that irreparable damage would result to the employer, and specifying the nature of the damage.

(d) If any employer or his officers or agents fails to comply with a compensation order making an award, that has become final, any beneficiary of such award or the deputy commissioner making the order. May apply for the enforcement of the order to the Federal district court for the judicial district in which the injury occurred (or to the United States District Court for the District of Columbia if the injury occurred in the District). If the court determines that the order was made and served in accordance with law, and that such employer or his officers or agents have failed to comply therewith, the court shall enforce obedience to the order by writ of injunction or by other proper process, mandatory or otherwise, to enjoin upon such person and his officers and agents compliance with the order.

(e) Proceedings for suspending, setting aside, or enforcing a compensation order, whether rejecting a claim or making an award, shall not be instituted otherwise than as provided in this section and section 18.

4. 33 U.S.C. § 927(b)

> (b) If any person in proceedings before a deputy commissioner *or Board* disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered to do so, any pertinent book, paper, or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take

the oath as a witness, or after having taken the oath refuses to be examined according to law, the deputy commissioner *or Board* shall certify the facts to the district court having jurisdiction in the place in which he is sitting (or to the United States District Court for the District of Columbia if he is sitting in such District) which shall thereupon in a summary manner hear the evidence as to the acts complained of, and, if the evidence so warrants, punish such person in the same manner and to the same extent as for a contempt committed before the court, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process of or in the presence of the court.

III. District of Columbia Code (1981 Ed.)

1. Section 1-233

Previously cited under Section 602 of the District of Columbia Self-Government and Governmental Reorganization Act, 93-198, 87 Stat. 774

2. Section 11-942

(a) The Superior Court may compel the attendance of witnesses by attachment. At the request of any party, subpenas [subpoenas] for attendance at a hearing or trial in the Superior Court shall be issued by the clerk of court. A subpena [subpoena] may be served at any place within the District of Columbia, or at any place without the District of Columbia that is within twenty-five miles of the place of the hearing or trial specified in the subpena [subpoena]. The form, issuance, and manner of service of the

subpena [subpoena] shall be as prescribed by the rule of the court.

(b) A subpena [subpoena] in a criminal case in which a felony is charged may be served at any place within the United States upon order of a judge of the court. (July 29, 1970, 84 Stat. 487, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-942.)

3. Section 11-943

(a) All process other than a subpena [subpoena] may be served at any place within the District of Columbia, and, when authorized by statute or by the Federal Rules of Civil Procedure, at any place without the District of Columbia.

(b) Service upon a third-party defendant, upon a person whose joinder is needed for just adjudication, and upon persons required to respond to any order of commitment for civil contempt may be served at all places outside the District of Columbia that are not more than one hundred miles from the place of hearing or trial specified.

(c) The form, issuance, and manner of service of process shall be prescribed by rule of the court. (July 29, 1970, 84 Stat. 487, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-943.)

4. Section 13-302

Subject to the provisions of law or rules of court for service by other persons, the United States marshal for the District of Columbia or his deputy shall serve the process of the District of Columbia Court of Appeals, and the Superior Court of the District of Columbia. (Dec. 23, 1963, 77 Stat. 513, Pub. L. 88-241, § 1; July 29, 1970, 84

Stat. 552, Pub. L. 91-358, title I, § 142(3); 1973 Ed., § 13-302.)

5. Section 36-303

(a) This chapter shall apply in respect to the injury or death of an employee of an employer, as defined in paragraphs (9) and (10) of § 36-301, irrespective of the place where the injury or death occurs provided that at the time of such injury or death this employment is principally localized in the District of Columbia, with the following exceptions:

(1) No employee shall receive compensation under this chapter and at the same time receive compensation under the workers' compensation law of any other state for the same injury or death;

(2) Casual employees or any employees who are employed wholly without the District of Columbia, except that for all purposes of this chapter, casual, occasional or incidental employments outside of the District by the District employer of an employee or employees regularly employed by the employer within the District of Columbia shall be construed to be employment within the District of Columbia; and

(3) An employee and his employer who are not residents of the District of Columbia and whose contract of hire is entered into in another state shall be exempted from the provisions of this chapter while such employee is temporarily or intermittently within the District of Columbia doing wor. or such nonresident employer, if such employer has furnished workers' compensation insurance coverage under the workers' compensation or similar laws of such other state, so as to cover such employee's employ-

ment while in the District of Columbia. The benefits under this chapter or similar laws of such other state shall be the exclusive remedy against such employer for any injury, whether resulting in death or not, received by such employee while working for such employer in the District of Columbia.

(b) Every employer subject to this chapter shall be liable for compensation for injury or death without regard to locality of injury or to fault as a cause of the injury or death.

(c) In the case of an employer who is a subcontractor, the contractor shall be liable for and shall secure the payment of such compensation to employees of the subcontractor unless the subcontractor has secured such payment.

(d) Liability for compensation shall not apply where injury to the employee was occasioned solely by his intoxication or by his willful intention to injure or kill himself or another. (July 1, 1980, D.C. Law 3-77, § 4, 27 DCR 2503.)

6. Section 36-322

(a) A compensation order shall become effective when filed with the Mayor as provided in § 36-320, and, unless proceedings for the suspension or setting aside of such order are instituted as provided in subsection (b) of this section, shall become final at expiration of the 30th day thereafter.

(b)(1) Where a compensation order is not in accordance with this chapter, such order may be suspended or set aside, in whole or in part, upon application of any party for review of the order by the Mayor, or, if the Mayor declines to review the order or does not provide for such

review as authorized in paragraph (2) of this subsection or if a final decision pursuant to such review is not rendered within the time period established in paragraph (2) of this subsection, then by the District of Columbia Court of Appeals in accordance with paragraph (3) of this subsection.

(2) The Mayor is authorized to establish an administrative procedure for review of compensation orders raising a substantial question of law or fact. Application for such review shall be made by any party within 30 days from the date a compensation order is filed as provided in § 36-320. Final decisions issued pursuant to such review shall be rendered within 45 days from the date of the application and shall be based upon the record of the hearing. If a final decision is not rendered within such 45 day period the compensation order shall be considered a final decision for purposes of appeal pursuant to paragraph (3) of this subsection. The findings of fact in the order under review shall be conclusive if supported by substantial evidence in the record, considered as a whole. A case may be remanded for further appropriate action. If any party shall apply to the Mayor for leave to adduce additional evidence and shall show to the satisfaction of the Mayor that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the initial hearing before the Mayor, the Mayor may order such additional evidence to be taken and to be made a part of the record. The Mayor may modify his findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole. The Mayor may modify or set aside his original order by reason of such modified or new findings of fact. The application by a party for leave to adduce additional evidence shall stop the running of the 45 day period in which a decision by the Mayor must be rendered. If the

Mayor remands the case, any party may apply for review within 30 days from the date a new compensation order is filed. A final decision must be rendered within 45 days from the date of the application for review of such new compensation order, and if not rendered within such period, then upon expiration of the 45 days such new compensation order shall be considered a final decision for purposes of paragraph (3) of this subsection. The payment of any amounts required by a compensation order shall not be stayed pending final decision on review unless so ordered on the grounds that irreparable injury would otherwise ensue to the employer.

(3) Pursuant to the District of Columbia Administrative Procedure Act (D.C. Code, § 1-1501 et seq.), any party in interest who is adversely affected or aggrieved by a final decision rendered after review of a compensation order as provided in paragraph (2) of this subsection, or, if the Mayor has declined to review the order or does not establish a procedure for such review, any party in interest who is adversely affected or aggrieved by a compensation order which has been filed as provided in § 36-320, may petition for review of such decision or order by the District of Columbia Court of Appeals. If any party shall apply to the Court for leave to adduce additional evidence and shall show to the satisfaction of the Court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the hearing before the Mayor, the Court may order such additional evidence to be taken before the Mayor, and to be made part of the record. The Court may remand the case for appropriate action.

(c) If any employer or his officers or agents fail to comply with a compensation order making an award that has become final, any beneficiary of such award, or the Mayor, may apply for the enforcement of the order to the Superior Court of the District of Columbia for enforcement of such order and upon showing that such employer or his officers or agents have failed to comply therewith, the Court shall enforce obedience to the order by writ of injunction or by other proper process, mandatory or otherwise, to enjoin upon such person and his officers and agents compliance with the order.

(d) Proceedings for suspending, setting aside, or enforcing a compensation order whether rejecting a claim or making an award, shall not be instituted otherwise than as provided in this section and § 36-320. (July 1, 1980, D.C. Law 3-77, § 23, 27 DCR 2503.)

7. Section 36-501

Previously cited under Acts of Congress as the Workmen's Compensation Law of the District of Columbia.

IV. Acts of the City Council

A. District of Columbia Workers' Compensation Act of 1979, D.C. Law 3-77.

1. Section 4(a)

previously cited under Section 36-303 of the District of Columbia Code (1981 Ed.)

2. Section 23(b)(3)

previously cited under Section 36-322(b)(3) of the District of Columbia Code (1981 Ed.)

3. Section 23(c)

previously cited under Section 36-322(c) of the District of Columbia Code (1981 Ed.)

V. United States Constitution

1. Article I, Section 8, Clause 17

[17] To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;

2. Article VI, Section 2

[2] This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

APPENDIX OF OPINIONS BELOW

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

GREATER WASHINGTON CENTRAL LABOR COUNCIL, ET AL., *Plaintiffs,*	:	
v.	:	Civil Action No. 9655-80
DISTRICT OF COLUMBIA, *Defendants.*	:	

Washington, D.C.
Friday, September 26, 1980

The above-entitled action came on for a motions hearing before the Honorable JOHN F. DOYLE, Associate Judge, in Courtroom Number 15, commencing at approximately 2:44 p.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS HER ORIGINAL NOTES AND RECORDS OF TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED

APPEARANCES:

On behalf of the Plaintiffs:

JOSEPH H. KOONZ, JR., Esquire
MARK J. BRICE, Esquire
PATRICK M. REGAN, Esquire
Washington, D.C.

On behalf of the Defendant:

GARY FREEMAN, Esquire
Wasington, D.C.

Darlene M. Leasure
Official Court Reporter Telephone: 727-1769

PROCEEDINGS

[Excerpt]

[4:10 p.m.]

THE COURT: This is a suit by the Greater Washington Central Labor Council, AF of L-CIO, and three individual Plaintiffs against the District of Columbia, a municipal corporation.

The relief requested is a judgment, declaring Act—D.C. Act 3-188, known as the D.C. Workmen's Compensation Act of 1979, null and void and for injunctive relief against its enforcement.

The matter comes before the Court upon the motion of the Plaintiff for summary judgment, and the cross motion of the District of Columbia for summary judgment, or in the alternative, to dismiss.

There is no genuine issue respecting the material facts that a Plaintiff, Greater Washington Central Labor Council, is an organization, comprising over 150 unions representing workers regularly engaged in employment in the District of Columbia, and that it is in addition a District of Columbia employer.

Next, that the Plaintiff, Robert Patterson [sic], Joslyn Williams, and William Saunders are employees regularly engaged in employment in the District of Columbia.

Next, that the District of Columbia is a municipal corporation and is the governing body of the District of Columbia.

And, finally, that the District of Columbia Workmen's Compensation Act of 1979, D. C. Act 3-188, was passed by the Council of the District of Columbia on May the 6th, 1980, and was approved by Mayor Marion S. Barry, Jr., on May 14, 1980, and that thirty legislative days after the Act had been presented to – that the thirty legislative days after the Act had been presented to the Congress expired without Congressional disapproval.

There being no genuine issue of fact, what is presented, are pure questions of law.

The central question of law is, was the Council of the District of Columbia acting within its statutory authority when it enacted the D. C. Workmen's Compensation Act of 1979?

Now, the history of the Workmen's Compensation Act in the District of Columbia may here be briefly summarized.

In 1927 the Congress passed the Federal Longshoremen and Harbor Workers Act, 33 U.S.C. 901, *et sequitur,* and a year later in 1928 made it applicable to certain employments in the District of Columbia, 36 D. C. Code, 501 and the following sections.

The workmen's compensation program of the District of Columbia is administered by the United States Department of Labor, through the Office of Workmen's Compensation Programs, District Office, in Washington, D.C. The Program has some forty-two allocated and budgeted positions. Active cases are estimated at from eight thousand to twelve thousand. Administrative appellate pro-

cedures involve appeals to a Benefits Review Board, 33 U.S.C. 921. Judicial review of an order of this Board is permitted and must be made to the United States Court of Appeals for the District of Columbia Circuit, 33 U.S.C. 921c, and not to the District of Columbia Courts, *Harrington versus Moss,* 407 A.2d 658, 663. Enforcement of orders must be made by application to the United States District Court for the District of Columbia, 33 U.S.C. 921d. The cases and rulings in respect of this Act over the long period of years are myriad.

In 1973 the then Secretary of Labor Brennen suggested to the Honorable Ancher Nelson of the House of Representatives, in response to the Congressmen's request for departmental views on the proposed District self-government and governmental reorganization act, that there be a transfer of administration of the District of Columbia Compensation Act to the District of Columbia government.

In the same letter, the Secretary opposed a provision transferring from him responsibilities for the District of Columbia Employment Services, voluntary apprenticeship in the District, and the processing of claims by the District of Columbia employees.

As the bill was enacted, however, the District of Columbia Self-Government Act took precisely the opposite course. It did transfer the functions respecting the District of Columbia Employment Service, voluntary apprenticeship in the District, and the processing of claims by the District of Columbia employees to the District of Columbia government, in Title 2, Section 204 of the Act, but it did not transfer the workmen's compensation function involving private employment.

The extremely detailed planning used to resolve the difficult problems raised by the transfer of functions, which

were made in this Act, including the steps taken to reserve the rights of the Labor Department employees affected, were described in detail to the Congress in the hearings before the District of Columbia committee of the House and the Senate by Mr. Julian Dugas on June the 26th of 1974.

In May of 1979 the Honorable Marion S. Barry submitted for the consideration 96th Congress, in a letter to the Speaker of the House of Representatives, a draft bill designed to effect the transfer of the private workmen's compensation function.

I am advised by the Corporation Council that this bill was never formally introduced to the Congress.

In February of 1980 the Assistant Secretary of the Department of Labor transmitted to the Corporation Council a memorandum of the Departmental Solicitor giving the opinion that the District of Columbia Self-Government Act did not give the District of Columbia the authority to enact its own workmen's compensation program without Congressional repeal of the District of Columbia Workmen's Compensation Act. That is, of course, 36 D.C. Code 501.

The act of the District of Columbia Council here at issue followed.

In the Act it will be noted that the Council establishes a new workmen's compensation structure and specifically repeals existing Federal legislation. The Act otherwise eliminates the judicial review function now held by the United States Court of Appeals for the District of Columbia Circuit and places this function in the District of Columbia Court of Appeals.

The function of the United States District Court for the

District of Columbia in the enforcement of the workmen's compensation orders is eliminated and this function transferred to the Superior Court of the District of Columbia.

Now, at the outset of analysis, it would be well to clear away any legal underbrush which might obscure the true issues which the Court believes are involved in the case.

First of all, the Court would like to deal with the question of ripeness capably raised by the District of Columbia. The Court, however, does not agree with counsel, certainly, as respects the relief of declaratory judgment because involved in here is the whole structure of employer employee rights in the workmen's compensation field. It does not believe that any requirement of justiciable case or controversy require that employers and employees in this vital field remain silent until the proposed effective date of this new bill. Since their rights are so fundamentally affected, both employers and employees, common prudence would require that they move as rapidly as possible in order to examine and find out and determine the validity of legislation which will govern them in the year 1981.

So accordingly, the Court feels that there is a justiciable case for controversy, that there is a case in which vital equitable interests holds that the parties involved hereto are the proper parties to the action, and that their respective rights are vitally involved.

Secondly, this Court desires to make it clear that it does not take a narrow view of the legislative powers of the District of Columbia Council. The legal nature and character of the District of Columbia government is that of a municipal corporation. Title – Section 717(a) of Title 7 of the Home Rule Act provides as follows. All of the territory constituting the permanent seat of the Government

of the United States shall continue to be designated as the District of Columbia. The District of Columbia shall remain and continue a body corporate, as provided in Section 2 of the revised statutes relating to the District. Said corporation shall continue to be charged with all of the duties, obligations, responsibilities, and liabilities, and to be vested with all of the powers, rights, and privileges and immunities and assets respectively imposed upon and vested in said corporation or the commissioner.

This essentially has been the consistent view which the Congress has taken of the nature of the District of Columbia government since the original legislation chartering it in 1801.

However, it has long been recognized that the Congress of the United States possesses, with respect to the District, all of the powers which a state would possess. Hence, the Congress can and often in the past has delegated to the District's government powers which elsewhere are normally and usually exercised by the state legislatures, rather than by city councils.

The Supreme Court has noted this extensively in the great case, the *District of Columbia against John R. Thompson and Company*, 346 U.S. 100 Pages 104 through 111, and the United States Circuit Court of Appeals has likewise explained this status in *Firemen's Insurance Company of Washington v. Washington,* 157 U.S. App. D.C. 320.

Furthermore, the grant of legislative powers to the District of Columbia Council in the Home Rule Act has been made in broad terms. Section 302 of Title 3 recites as follows. Except as provided in Section 601, 602, and 603 the legislative power of the District shall extend to all rightful subjects of legislation within the District, consis-

tent with the Constitution of the United States and the provisions of this Act, subject to all restrictions and limitations imposed upon the state by the tenth section of the first article of the Constitution of the United States.

This is the same type of language which the Congress has conventionally used to establish its own territorial governments.

Furthermore, the breadth of the grant of power made to the District of Columbia Council may further be gauged by reference to the preamble of the Act.

I am reciting provisions of Title 1, Section 102(a).

Subject to the retention by Congress of the ultimate legislative authority over the Nation's Capitol, granted by Article 1, Section 8 of the Constitution, the intent of Congress is to delegate certain legislative powers of the Goverment of the District of Columbia, authorize the election of certain local officials by registered qualified electors in the District of Columbia, grant to the inhabitants of the District of Columbia powers of local self-government, to modernize, reorganize, and otherwise improve the governmental structure of the District of Columbia, and to the greatest extent possible, consistent with the Constitutional mandate, relieve Congress of the burden of legislating upon essentially local District matters.

In summary on the point, if there were no existing workmen's compensation program Federally authorized to operate and actually operating in the District of Columbia, in other words, a legislative vacuum in the field, this Court could readily conclude that the Council had the power to fill the vacuum by appropriate legislation. However, such is not the case.

Also, the extent of the Council's powers in these provi-

sions may not be resolved by considering Section 302 and the preamble in isolation. The Home Rule Act does not begin and end with these paragraphs. Instead of a simple and all encompassing grant of power, this legislation is a true complex of powers, reserved and powers extended. And to determine what has been done in the present instance, requires a much broader survey of the legislation.

Now, to continue with the analysis.

Upon any initial reading of the bill, it becomes obvious that the Congress could, when it passed the Home Rule Act, have repealed its own legislation, which now governs the District of Columbia workmen's compensation operation in the private sector, and transferred the function, now performed by the United States Department of Labor, and the United States Circuit and District Courts, to the District government – the District of Columbia Court of Appeals and the District of Columbia Superior Court respectively. It is equally obvious that when the Congress passed the Home Rule bill it did not so.

The true issue, therefore, is whether, in the Home Rule Act, the Congress, not having itself effected such a repeal and transfer, nevertheless, empowered the City Council later to do so.

In order to analyze this interesting question, the Court shall follow the principle enunciated by the District of Columbia Court of Appeals in *Georgetown against the Zoning Commission,* 392 A.2d, 1027 at Page 1033. And I quote, "It is a cannon of statutory interpretation that one looks at the particular statutory language within the context of the whole legislative scheme when the legislative intent is to be determined."

The first factor to be noted in this respect is that when the Congress did transfer the active ongoing staffed and

funded functions performed by the Secretary of Labor with respect to public employment services for the District of Columbia, it did so specifically and expressedly, carefully providing for the mechanics of transfers. These matters are carefully detailed in Title 2 of the Act at Sections 204(e) and (f). It further scrupulously provided safeguards for the employment rights of the Federal employees then engaged in the function. I refer in this respect to Title 2, Section 204(g).

Now, these provisions that it made for the transfer of these – of the functions of the Secretary of Labor would, at least, in a prima facie fashion, evince a legislative pattern and purpose to transfer to the District of Columbia existing and operating Federal – and operating functions conducted under Federal statutes by Federal officials, only through the means of specific and express statutory provision, taking care to preserve carefully the transfer of records and accounts, and provide for funding and safeguarding rights of persons employed in the Federal office in this capacity.

To suggest that the Congress intended to treat the workmen's compensation program covering the private sector in a different fashion would be atypical and against the grain of the legislative pattern manifest in the Act. These type of factors are known to the law of statutory interpretation under the Latin maxim *inclusio unius exclusio alterius,* or in the present context, suggesting the inference, if the Congress wished to repeal the Act or authorize its municipal corporation, the District of Columbia, to do so, it would have so stated, when it transferred the other functions of the Secretary of Labor.

Now, this is not conclusive on the point, but it leads us to examine with greater care the language of the Congress, when we proceed to review those sections which specific-

ally restrict the – and prohibit the power to the Congress – to the Council.

In this regard, a number of specific sections have been suggested to the Court. The most important one is as follows. It is Title 2, Section – wait a minute. It is Title – it is Section 602(a) of Title 6 of the Act. Title 6 itself describes the reservation of Congressional authority.

Section 602(a) starts out as follows. The Council shall have no authority to pass any acts contrary to the provisions of this Act, except as specifically provided in this Act, or two, – and I go to number three, enact any act, or enact any act to amend or repeal any act of Congress which concerns the functions or property of the United States, or which is not restricted in its application exclusively in or to the District.

In that particular sentence, the most important words are, to enact any act or repeal any act of Congress which concerns the functions of the United States.

Now, the Corporation Counsel has made in this regard an able argument, and, indeed, he made an able argument throughout his entire case. He suggests, in effect, that there are two to be worn by Federal officials, who are operating in and for the District of Columbia, and those who are operating in a national sense.

The dictionary definition of the word function is to perform, execute, and administer. Black's Law Dictionary arrives at this definition, quoting *McNamera against Powell,* 52 New York Supp. 2d, 515 at Page 551.

In the present instance, it is impossible to conceive this function as anything other than a function of the United States. And is performed by the Secretary of Labor and his employees. Appeals are to the United States Circuit

Court of Appeals for the District of Columbia Circuit. Enforcement is by the United States District Judges for the District of Columbia. So the performance, execution, and administration is by the officials of the United States. They are functions of the United States.

I appreciate the distinction suggested to me by the Corporation Counsel. I specifically reject it.

I proceed further to examine the prohibitions, and at this time, I go to number eight, which says, that the City Council shall have no authority to pass any act; or, two, enact any act or regulation relating to the United States Court for the District of Columbia or any other Court of the United States in the District other than the District Courts or relating to the duties or powers of the United States Attorney, or the United States Marshal for the District of Columbia.

I have made reference previously to the sections of the Code and to the cases in which the appellate jurisdiction or the jurisdiction of judicial review over this function is performed by the United States Court of Appeals for the Circuit and its enforcement function by the United States District Court.

This provision of the Act, accordingly, is likewise offended by the action of the City Council.

The corollary to that is pointed out, of course, is at the jurisdiction of our own District Courts are expanded to handle the functions which the council has prohibited now to the Federal Courts. This likewise, in the opinion of the Court, comes into the prohibition of 602(a)(4) of the Act.

I likewise note that the further provision is offended. That is 602(b), which recites, that nothing in this Act shall be construed as vesting in the District of Columbia govern-

ment any greater authority – and then I will pass over some of the other matters recited there – as over any Federal agency than was vested in the commissioner prior to the effective date of Title 4 of this Act.

I cannot see otherwise, and the fact that the District – that the D. C. Council is eliminating a function performed by the Federal agency, the Department of Labor.

Now, accordingly, looking at the whole matter, appreciating the capable arguments that have been made, the Court finds that the D. C. Workmen's Compensation Act of 1979 is null and void and that it specifically violates the provisions of Title 6 of the Home Rule Act reserving grants of – reserving Congressional authority in the instances involved. The declaratory judgment to that effect will issue.

On the question of injunction, the Court does not depart from its finding on ripeness made at the beginning of the action, but in such matters, there questions – there are questions of ripeness, specifically, which may be addressed to the injunctive phase. What is to be enjoined? Who do I – what is being threatened specifically at this moment?

The Court believes that the proper action to take in this regard is to deny the application for injunctive relief, without prejudice to renew it later, should the same become necessary.

The Court indulges in the presumption that the District of Columbia government will, as it always has, abide by the law expressed.

Would you prepare me, Mr. Koonz, an order formalizing this matter?

Mr. Koonz: We certainly will, Your Honor.

We have prepared, as part of our pleadings, a proposed order.

THE COURT: How does it –

MR. KOONZ: It reads as follows.

Upon consideration of Plaintiffs' motion for summary judgment and the opposition thereto, it is this 26th day of September, 1980, ordered that Plaintiffs motion for summary judgment be and hereby is granted.

It is further ordered that the summary judgment declaring the Workmen's Compensation Act of 1979 is hereby null and void, and the order is hereby entered.

THE COURT: Have you got it there?

MR. KOONZ: It is part of your –

THE COURT: Let me see it.

MR. KOONZ: It is in your file Your Honor. It was attached to our original motion.

THE COURT: What is the date?

MR. KOONZ: The 26th of September, Your Honor.

[A pause.]

THE COURT: Gentlemen, I signed it. And I have no doubt but that a question of this great importance will go through the Court of Appeals. It is my opinion that the function of the Trial Court is certainly consistent with appropriate care to decide these matters as rapidly as possible, so it can be addressed effectively to the appellate Court.

MR. KOONZ: Will you allow me a moment?

I have been practicing at the bench for well over twenty years. I would like to thank the Court for its approach, its thoroughness, its obvious dedication to a matter that is of very serious and far-reaching interest to the community.

I am sure counsel would join me in thanking you for staying with this hot issue and spending the time that I know you have, and for giving us the opinion that obviously was –

THE COURT: Thank you.

Mr. Freeman may disagree with you sharply.

MR. FREEMAN: Well, I may disagree, Your Honor, as to the opinion, but certainly not as to the other sentiments.

THE COURT: Thank you all. It is a very interesting argument, capably briefed and capably argued.

MR. KOONZ: Thank you, Your Honor.

MR. FREEMAN: Thank you, Your Honor.

[Thereupon, the case was concluded at approximately 4:42 p.m.]

CERTIFICATE OF REPORTER

I, Darlene M. Leisure, an Official Court Reporter for the Superior Court of the District of Columbia, do hereby certify that I reported by machine shorthand, in my official capacity, the proceedings had and testimony adduced, upon the motions hearing in the case of GREATER WASHINGTON CENTRAL LABOR COUNCIL, ET AL. v. DISTRICT OF COLUMBIA,

Civil Action No. 9655-80, in said Court, on the 26th day of September, 1980.

I further certify that the foregoing pages constitutes an excerpt of the official transcript of constitutes an excerpt of the official transcript of said proceedings, as taken from my machine shorthand notes.

In witness whereof, I have hereto subscribed my name, this the 30th day of September, 1980.

/s/ _____

FILED Jan 28, 1982

DISTRICT OF COLUMBIA COURT OF APPEALS

NO. 80-1311

DISTRICT OF COLUMBIA,

Appellant,

v.

THE GREATER WASHINGTON CENTRAL LABOR COUNCIL, AFL-CIO,

Appellee,

FOOD AND ALLIED SERVICE TRADES COUNCIL OF METROPOLITAN WASHINGTON,

Intervenor.

No. 80-1312

THE GREATER WASHINGTON BOARD OF TRADE

Appellant,

v.

DISTRICT OF COLUMBIA, *et al.*,

Appellees.

APPEALS FROM THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

(Hon. John F. Doyle, Trial Judge)

(Argued April 24, 1981 Decided January 28, 1982)

Charles L. Reischel, Deputy Corporation Counsel, with whom *Judith W. Rogers,* Corporation Counsel, was on the briefs, for appellant in No. 80-1311 and appellees in No. 80-1312.

Joseph E. Koonz, Jr., with whom *Mark J. Brice* and *Patrick M. Regan,* were on the brief, for appellee in No. 80-1311.

Mark L. Schaffe, with whom *James A. Mannino* and *James F. Green* were on the brief, for intervenor.

John R. Risher, Jr., with whom *Stanley J. Brown* and *Judith A. Malone* were on the briefs, for amicus curiae in No. 80-1311 and appellant in No. 80-1312.

Thomas D. Wilcox was on the brief for the Alliance of American Insurers, American Insurance Association, and National Association of Independent Insurers, as amici curiae.

Before HARRIS and PRYOR, *Associate Judges,* and GALLAGHER, *Associate Judge, Retired.*

PRYOR, *Associate Judge:* This case presents the issue of whether the District of Columbia Council exceeded its legislative authority under the District of Columbia Self-Government and Governmental Reorganization Act, D.C. Code 1981, §§ 1-201 *et seq.,* (Self-Government Act), when it enacted the District of Columbia Workers' Compensation Act of 1979, D.C. Law 3-77, 27 D.C. Reg. 2503 (1980) (codified at D.C. Code 1981, §§ 36-301 *et seq.*), and repealed the existing workmen's compensation legislation applicable to the private sector in the District of Columbia. The trial court concluded that it did. In addition, we are asked to decide whether the trial court abused its discretion in denying the Greater Washington Board of Trade's motion for leave to intervene in the action below. We conclude that the trial court erred in ruling that the Council exceeded its authority in enacting the Worker's Compensation Act, and that the trial court did not abuse its discretion in denying Greater Washington Board of Trade's motion to intervene. Accordingly, we reverse in part and affirm in part.

I.

An understanding of several pertinent statutes is necessary to our analysis of the Council's enactment of the Workers' Compensation Act. Before reaching the issue of whether the Council exceeded its legislative authority in passing the Workers' Compensation Act, we review the history of workmen's compensation in the District of Columbia, the Self-Government Act, and the new District of Columbia Workers' Compensation Act.

A. The Longshoremen's and Harbor Workers' Compensation Act.

Since 1928, workmen's compensation for the District of Columbia has been governed by the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. §§901 *et seq.* (1976) (Longshoremen's Act). In 1927, in response to the continuing concern about compensation for maritime workers injured on navigable waters, Congress enacted the Longshoremen's Act, "a modern and reasonable workmen's compensation law for certain local maritime workers who are injured while loading or unloading or repairing vessels at the dock – provided their injury occurs while on board the vessel." S. REP. NO. 852, 70th Cong., 1st Sess. 1 (1928).

The Longshoremen's Act vests the responsibility for the administration of the workmen's compensation program in the United States Secretary of Labor. 33 U.S.C. § 939 (1976). The administrative procedure provided by the Act consists of a three-tier system. At the first stage, a deputy commissioner issues a recommendation as to whether the workmen's compensation claim should be paid. *Id.*, § 919(a)-(c). At this point, either party may request a formal hearing before a Department of Labor administrative

law judge. *Id.*, § 919(d) (Supp. III 1979). Review of the administrative law judge's formal order is provided by the Benefits Review Board. *Id.*, § 921(b) (1976, Supp. III 1979). Persons adversely affected by the final order of the Benefits Review Board may appeal to the United States Court of Appeals for the circuit in which the injury occured. *Id.*, § 921(c) (1976). In the event that an employer fails to comply with a compensation award, the beneficiary of the award or the deputy commissioner making the order may seek enforcement in the Federal district court for the judicial district in which the injure occurred. *Id.*, § 921(d) (1976).

Although public employees of the District of Columbia government were protcted by a federal workmen's compensation program at the time of the passage of the Longshoremen's Act, *see* 5 U.S.C. § 8139 (1976), no similar program existed for their counterparts in the local private sector. Between 1921 and 1926, several bills creating workmen's compensation programs for private employees in the District of Columbia were introduced in Congress. However, "disagreements over the system of insurance and the plan of administration led to a legislative deadlock." S. REP. NO. 852, 70th Cong., 1st Sess. 1 (1928). Recognizing that the Longshoremen's Act provided a solution to its inability to agree on a program to cover private employees in the District of Columbia, *see generally id.*, at 2; H.R. REP. NO. 859, 69th Cong., 1st Sess. 1 (1926), Congress passed a workmen's compensation law for the District of Columbia, Act of May 17, 1928, ch. 612, § 1-3, 45 Stat. 600 (1928) (Workmen's Compensation ACt of 1928) (codified at D.C. Code 1973, §§ 36-501, -502), which extended the provisions of the federal statute to cover the private employment sector. Section 36-501 provided in pertinent part:

> The provisions of chapter 18 of title 33, U.S. Code, including all amendments that may hereafter be made thereto, shall apply in respect to the injury or death of an employee of an employer carrying on any employment in the District of Columbia, irrespective of the place where the injury or death occurs. . . .

This section incorporated both the substantive and procedural provisions of the Longshoremen's Act. *Director, Office of Workers' Compensation Programs v. National Van Lines, Inc.*, 198 U.S.App.D.C. 239, 246, 613 F.2d 972, 979 (1979), *cert. denied*, 448 U.S. 907 (1980).

B. The Self-Government Act

The United States Constitution vests Congress with the exclusive legislative authority for the District of Columbia. U.S. CONST. art. I, § 8, cl. 17. In 1973, Congress passed the Self-Government Act to "relieve Congress of the burden of legislating upon essentially local District matters." D.C. Code 1981, § 1-201(a). Subject to its retention of the ultimate legislative authority over the District of Columbia, Congress delegated certain specific legislative powers to the District of Columbia government. *Id.* These legislative powers "extend to all rightful subjects of legislation within the District consistent with the Constitution of the United States and the provisions of [the] Act . . . ." *Id.*, § 1-204. Congress expressly reserved its right

> to exercise its constitutional authority as legislature for the District, by enacting legislation for the District on any subject, whether within or without the scope of legislative power granted to the Council by [the] Act, including legislation to amend or repeal any law in force in the District

> prior to or after enactment of [the] Act and any act passed by the Council. [*Id.*, § 1-206.]

In addition, Congress placed several explicit limitations on the Council's legislative authority. The specific limitations which are pertinent to the issue before us are enumerated in § 1-233:

> (a) The Council shall have no authority to pass any act contrary to the provision of this Act except as specifically provided in this Act, or to—
>
> * * * *
>
> (3) [e]nact any act, or enact any act to amend or repeal any Act of Congress, which concerns the functions or property of the United States or which is not restricted in its application exclusively in or to the District;
>
> (4) [e]nact any act, resolution, or rule with respect to any provision of Title 11 [of the District of Columbia Code] (relating to organization and jurisdiction of the District of Columbia courts);
>
> * * * *
>
> (8) [e]nact any act or regulation relating to the United States District Court for the District of Columbia or any other court of the United States in the District other than the District courts, or relating to the duties or powers of the United States Attorney or the United States Marshall for the District of Columbia[.]
>
> (b) Nothing in this Act shall be construed as vesting in the District government any greater authority over the National Zoological park, the National Guard of the District of Columbia, the

Washington Aqueduct, the National Capital Planning Commission, or, except as otherwise specifically provided in this Act, over any federal agency, than was vested in the Commissioner prior to January 2, 1975.

C. Workers' Compensation Act of 1979

On May 6, 1980, the District of Columbia Council passed the Workers' Compensation Act of 1979. Following the approval of Mayor Marion S. Barry, Jr., this legislation was forwarded to Congress on May 15, 1980, for the 30-day review period required by D.C. Code 1981, ⅜ 1-233(c)(1). On July 1, 1980, in the absence of congressional disapproval, the Workers' Compensation Act officially became law. *See* 27 D.C. Reg. 2974 (1980). Pursuant to § 47 of the Act, it was scheduled to take effect on October 1, 1981.

The Workers' Compensation Act provides an administrative scheme for compensation claims in the private sector of employment. See generally 27 D.C. Reg. 2503 (1980). It provides compensation for work-related injuries or death to employees of private businesses principally localized in the District of Columbia. D.C. Code 1981, § 36-303. Any party in interest adversely affected by a compensation award entered by the Mayor may petition for review to the District of Columbia Court of Appeals. *Id.*, § 36-322(b)(3). If an employer fails to comply with a compensation order, the beneficiary of the award or the Mayor may seek its enforcement in the Superior Court of the District of Columbia. *Id.*, § 36-322(c). Section 46 of the Act repeals the existing workmen's compensation law, enacted by Congress in 1928 to cover private employees in the District of Columbia.

II

On July 15, 1980, the Greater Washington Central Labor Council, AFL-CIO, an organization comprised of over 150 unions representing workers regularly employed in the Washington metropolitan area, and three employees from the private sector, brought suit against the District of Columbia government seeking a declaratory judgment as to the validity of the Workers' Compensation Act and injunctive relief against its enforcement. Both parties filed motions for summary judgment. On September 26, 1980, the trial court ruled that the Workers' Compensation Act was null and void as violative of §§ 1-233(a) and (b) of the Self-Government Act. The court, however, denied without prejudice the application for injunctive relief.

First, the trial court noted that in the absence of an existing federal workmen's compensation law, it well might have "conclude[d] that the Council had the power to fill the vacuum by appropriate legislation." In light of Congress' failure to repeal the existing legislation, however, the trial court held that Congress had not empowered the Council to effect such a repeal and a transfer of powers. The court noted that, under the Self-Government Act, Congress expressly provided for the transfer of public employment services from the United States Department of Labor to the District of Columbia government, carefully detailing the mechanics of transfer and scrupulously safeguarding the employment rights of federal employees then engaged in that function. The trial judge concluded that Congress' express transfer of workers' compensation for government employees to the District of Columbia, coupled with its failure to effect a similar transfer of workmen's compensation for private employees, created an inference that Congress did not wish to repeal the federal legislation relating to private workmen's compensation.

Furthermore, the court found that the new law violated several of the explicit limitations on the District's legislative authority embodied in §§ 1-233(a) and (b) of the Self-Government Act. The court ruled that the City Council violated § 1-233(a)(3) (prohibiting the local legislature from amending or repealing any act of Congress concerning the functions or property of the United States), § 1-233(a) (4) (prohibiting the Council from enacting any act, resolution or rule affecting the organization or jurisdiction of the local District of Columbia courts), § 1-233(a) (8) (prohibiting any act or regulation relating to the United States federal courts in the District) and § 1-233(b) (limiting the authority of the District government over any federal agency to that vested in the Commissioner prior to January 2, 1975).

III

Appellants contend that the trial court erred in declaring the Workers' Compensation Act null and void. We agree that the Council acted within its delegated authority whe it enacted the Workers' Compensation Act.

A. Statutory Interpretation

The trial court acknowledge that as part of the Self Government Act, Congress transferred certain functions of the Secretary of Labor with respect to public employment services for the District of Columbia to the local government. The court reasoned that since Congress expressly provided for the transfer of those services, but did not provide for the transfer of the Department of Labor's administration of private workmen's compensation claims, its intention was to preclude the Council from interfering with the latter.

The express transfer by Congress of certain public employment services from the United States Department of Labor to the District government, in the absence of a concurrent transfer of private employment workmen's compensation, however, does not reflect a congressional intent to prohibit the local government from legislating with respect to private workmen's compensation. Rather, the transfer of the public workmen's compensation program to the District of Columbia required express congressional legislation since it was entrusted to the Department of Labor by a federal statute that is not applicable exclusively to the District of Columbia. *See* 5 U.S.C. §§ 8101 *et seq.* (1976); D.C. Code 1981, § 1-233(a) (3). On the other hand, the existing workmen's compensation program for private employees, the Workmen's Compensation Act of 1928, is a congressionally enacted local statute that deals exclusively with District of Columbia matters. Consequently, no express congressional legislation is required to effect the transfer. *See* Part B, *infra*.

Nothing is the language or the legislative history of the Self-Government Act indicates Congress' intent to prohibit the DIstrict form enacting legislation concerning workmen's compensation for the private sector. The absence of an express transfer of private workmen's compensation to the District of Columbia government indicates that Congress chose not to transfer the administration of private workmen's compensation at that time. It does not indicate an intention to preclude local legislation pertaining to workmen's compensation for private employees at a later time under the legislative authority granted to the District of Columbia pursuant to D.C. Code 1981, § 1-204.

B. Review of §1-233(a) (3)

The trial court ruled that the Workers' Compensation Act violated § 1-233(a) (3) of the Self-Government Act, which prohibits the Council from "enact[ing] any act to amend or repeal any Act of Congress, which concerns the functions or property of the United States or which is not restricted in its application exclusively in or to the District." The court reasoned that since the United States Department of Labor has been responsible for administering the local workmen's compensation program, and the federal courts are charged with enforcing and reviewing workmen's compensation claims, the repeal of D.C. Code 1973, § 36-501, affected a function of the United States.

Although the Self-Government Act does not define the term "functions of the United States" as used in § 1-233(a) (3), it reasonably may be surmised from the language "which is not restricted in its application exclusively in or to the District . . ." that Congress intended in § 1-233(a) (3) to withhold from local officials the authority to affect or to control decisions made by federal officials in administering federal laws that are national in scope as opposed to laws that relate solely to the District of Columbia. We are not persuaded that Congress intended that performance of a local function by federal officials prior to the Self-Government Act would transform the function into a "function of the United States" for purposes of § 1-233 (a) (3).

The legislative history further suggests that the language was inserted to safeguard the operations of the federal government on the national level:

> The functions reserved to the federal level would be those related to federal operations in the District and to property held and used by the

> Federal Government for conduct of its administrative, judicial, and legislative operations; and for the monuments pertaining to the nation's past. The functions would include physical planning of these federal areas, construction and maintenance of federal buildings, and administration of federal park areas . . . . [HOUSE COMM. ON THE DISTRICT OF COLUMBIA, 93d CONG., 2d SESS., D.C. EXECUTIVE BRANCH PROPOSAL FOR HOME RULE ORGANIC ACT 182 (Comm. Print 1973).[1]

Thus, what Congress sought to protect by inserting this limitation was the integrity of the federal domain as it relates to administration of federal legislation having national impllications.

The Workmen's Compensation Act of 1928 is a local law enacted by Congress which was restricted in its application "exclusively in or to the District," rather than a federal law which is national in scope. When Congress extended the coverage of the Longshoremen's Act to include

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[1] *See also D.C. Government Organization: Hearings on Self-Determination for the District of Columbia,* Part 2, 93d Cong., 1st Sess. 52 (1973) (statement of John Nevius, former Chairman of the District of Columbia City Council):

> For the purposes of identifying these Federal functions, we are speaking basically of three things: First, the function regarding Federal buildings and properties; second, the conduct of Federal business – and there you get into the whole complicated matter of Federal functions versus local functions or Federal interests versus local interests, admittedly not easy to distinguish – and third, the function of international relations and matters concerning the diplomatic corps.

private employees in the District of Columbia, it did not establish a local administrative authority. Rather, for purposes of convenience, the Secretary of Labor was given the authority to adminsiter the District of Columbia compensation program. *See* 33 U.S.C. § 939(b) (1976); S. REP. NO. 852, 70th Cong., 1st Sess. 2 (1928). Despite the Secretary of Labor's participation in the administration of D.C. Code 1973, § 36-501, the Act always has been regarded by the courts as a "local act" and construed as a state law. *See generally Thomas v. Washington Gas Light Co.*, 448 U.S. 261, 266 (1980) (plurality opinion); *Cardillo v. Liberty Mutual Insurance Co.*, 330 U.S. 469, 476 (1947); *Director, Office of Workers' Compensation Programs v. National Van Lines, Inc., supra,* 198 U.S.App.D.C. at 245 n.20, 613 F.2d at 978 n.20. In distinguishing the Longshoremen's Act from the local workmen's compensation program which it encompasses, the United States Court of Appeals for the District of Columbia Circuit stated in *Gudmundson v. Cardillo,* 75 U.S.App.D.C. 230, 234, 126 F.2d 521, 525 (1942):

> The case we have does not arise under the Longshoremen's Act, though doubtless it might if the injury had occurred on a vessel in the Potomac River, tied to a Washington dock, True enough, the language and provisions of the national Act are made applicable to the District, but the two Acts are wholly separate and distinct, for the reason that in the one Congress was exercising the judicial powers conferred under Art. III, whereas in the other – the local act – Congress was exercising the powers granted in Sec. 8 of Art.I, and these powers, . . . include . . . the powers of the State[,] . . . a delegation which . . . embraces full and unlimited jurisdiction . . . to provide for the general welfare of citizens within the District of Columbia . . . .

Moreover, it should be noted that no federal funds are involved in the Department of Labor's administration of § 36-501. Rather, the administrative cost is paid with District of Columbia funds. *See* D.C. Code 1978 Supp., § 36-503 ("There are authorized to be appropriated such sums as may be necessary to pay the expenses incurred by the United States Department of Labor in the administration of this chapter.")

Thus, the Secretary of Labor administers two separate workmen's compensation programs. The first of these, created by the Longshoremen's Act, is a national program passed by Congress in discharge of its Article I powers; the second, the Workmen's Compensation Act of 1928 was enacted as a local law pursuant to the plenary authority of Congress over the District of Columbia. U.S. CONST. art I, § 8, cl. 17; *Gudmundson v. Cardillo, supra,* 75 U.S.App.D.C. at 234, 126 F.2d at 525.[2] Therefore, we find that the function performed by the Secretary of Labor inthe administration of § 36-501 is a purely local one. Consequently, we conclude that the trial court erred in ruling that § 1-233(a)(3) was violated by the enactment of the District of Columbia Workers' Compensation Act of 1979.

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[2]The repeal of D.C. Code 1973, §§ 36-501, -502 and *id.*, 1978 Supp., § 36-503, by the Council has no impact on the functions of the United States Department of Labor in the administration of the Longshoremen's Act as it relates to the maritime industry nationally. The Council neither amended nor repealed any provision of that Act.

C. Review of § 1-233(a) (4)

The trial court also held that the Council increased the jurisdiction of the District of Columbia courts in violation of § 1-233(a)(4) of the Self-Government Act by vesting the Superior Court with the right to enforce compensation awards and this court with the authority to review final compensation orders. *See* D.C. Code 1981, §§ 36-322 (b)(3), (c). Section 1-233(a) (4) of the Self-Government Act states that "[t]he Council shall have no authority to . . . [e]nact any act . . . with respect to any provision of Title 11 [of the District of Columbia Code] (relating to organization and jurisdiction of District of Columbia courts) . . . ." We find that the local legislature did not affect impermissibly the jurisdiction of the local courts by enacting the Workers' Compensation Act.

Section 36-322(c) of the Workers' Compensation Act gives the Superior Court authority to use its equitable powers to enforce compensation awards. Under D.C. Code 1981, § 11-921(a), "the Superior Court has jurisdiction of any civil action or other matter (at law or in equity) brought in the District of Columbia." *See Andrade v. Jackson*, D.C.App., 401 A.2d 90, 992 (1979). Within the general equitable powers of the court is the authority to enforce orders of the Mayor and of administrative agencies. Thus, the enforcement of a compensation order of the Mayor or the administrative agency delegated the authority to issue such an order would fall within the equitable jurisdiction presently vested in the Superior Court.

Similarly, the jurisdiction of this court would not be expanded impermissibly by § 36-322(b)(3) of the Act. That section provides for judicial review of compensation orders pursuant to the District of Columbia Ad-

ministrative Procedure Act (DCAPA), D.C. Code 1981, §§ 1-1501 to -1529. As stated in D.C. Code 1981, § 11-722, "[t]he District of Columbia Court of Appeals has jurisdiction . . . to review orders and decisions . . . in accordance with the District of Columbia Administrative Procedure Act . . . ." In *Capitol Hill Restoration Society, Inc. v. Moore,* D.C. App., 410 A.2d 184, 186 (1979), we acknowledged that our jurisdiction to review administrative actions under the Administrative Procedure Act must arise in the form of a "contested case" as defined in the DCAPA.[3] "Under our decisions, in order for a matter to be a contested case, it must involve a trial-type hearing which is required either by statute or by constitutional right." *Capitl Hill Restoration Society, Inc., supra,* 410 A.2d at 187. Review by this court of final decisions relating to compensation orders rendered by the Mayor would arise under the contested case provision of the DCAPA because § 36-322(b) of the Workers' Compensation Act provides that the Mayor shall order that a "hearing" be conducted upon application of any party. Accordingly, this court will review compensation claims by virtue of its preexisting jurisdiction to review administrative proceedings. Therefore, the Workers' Compensation Act does not violate § 1-233(a)(4) of the Self-Government Act.

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[3]D.C. Code 1981, § 1-1502(8), provides in pertinent part:

> The term "contested case" means a proceeding before the Mayor or any agency in which the legal rights, duties, or privileges of specific parties are required by any law . . . or by constitutional right, to be determined after a hearing before the Mayor or before an agency . . . .

D. Review of § 1-233(a)(8)

The trial court also found that § 1-233(a)(8) of the Self-Government Act was violated by enactment of the Workers' Compensation Act since under the Longshoremen's Act the United States district courts have authority to enforce compensation awards and the United States courts of appeals have the authority to review final compensation orders. *See* 33 U.S.C. §§ 921(c). (d) (1976). Section 1-233(a)(8) prohibits the Council from passing any legislation relating to the local federal district court or any other court of the United States in the District of Columbia. We conclude that the trial court erred in ruling that the jurisdiction of the federal courts impermissibly was affected by the Workers' Compensation Act.

In 1970, Congress enacted the District of Columbia Court Reform and Criminal Procedure Act, D,C. Code 1981 §§ 11-101 *et seq.* (Court Reform Act), to establish a dual court system in this jurisdiction similar to the state court system in this jurisdiction similar to the state court systems. *Thompson v. United States,* 179 U.S. App. D.C. 76, 79 n. 14, 548 F.2d 1031, 1034 n. 14 (1976). It was Congress' intention to alleviate the Article III courts' burden of adjudicating local matters and thus to permit those courts to devote their attention to matters having national implications. *Palmore v. United States,* 411 U.S. 389, 408-09 (1973). The Court Reform Act established the District of Columbia Court of Appeals and the Superior Court of the District of Columbia and vested these courts with the authority to decide legal issues which solely affect the District of Columbia. *See, e.g., Andrade v. Jackson, supra,* 401 A.2d at 992 ("in establishing [a] unified local court system, Congress divested the federal courts of jurisdiction over local matters, restricting those courts to those matters generally viewed as federal business, . . .

and conferred upon the Superior Court the jurisdictional power to adjudicate local civil actions.") (footnote omitted); *Reichman v. Franklin Simon Corp.*, D.C. App., 392 A.2d 9, 12-13 (1978) ("D.C. Code 1973, § 11-921 gives the Superior Court plenary jurisdiction over civil matters brought in the District of Columbia, and correspondingly limits the civil jurisdiction of the District Court to those special matters of which District Courts nationwide may take cognizance.") (footnote omitted). By repealing the Workmen's Compensation Act of 1928, the Council has not decreased the jurisdiction of the United States courts in the District of Columbia. Workmen's compensation for the private employment sector in the District of Columbia is a "local matter" over which the Council has authority to legislate and the local courts have jurisdiction to adjudicate. The Council's action merely repealed the congressional incorporation of a national law into local statutes. The United States courts retain their jurisdiction to hear claims arising under the Longshoremen's Act. Thus, by enacting the Workers' Compenstion Act, the local legislature did not redefine the authority of the federal courts to rule on workmen's compensation claims under the Longshoremen's Act in violation of § 1-233(a)(8).

E. Review of § 1-233(b)

As another basis for striking down the workmen's compensation legislation enacted by the Council, the trial court ruled that § 1-233(b) of the Self-Government Act was violated when the Council eliminated a function performed by the Department of Labor under the Longshoremen's Act. Section 1-233(b) states in part: "Nothing in this Act shall be construed as vesting in the District government any greater authority over . . . any

federal agency, than was vested in the Commissioner prior to January 2, 1975." In enacting this provision, Congress sought to protect the federal interest by "prohibit[ing] the Council from exceeding its present authority over . . . any other Federal agency." (HOUSE COMM. ON THE DISTRICT OF COLUMBIA, 93d CONG., 2d SESS., TITLE VI-RESERVATION OF CONGRESSIONAL AUTHORITY 1477 (Comm. Print 1973). We fail to see, however, how the Council's action in enacting local workmen's compensation legislation offends that provision of the Self-Government Act.

Enactment of the Workers' Compensation Act neither increases nor decreases the District's authority over the Department of Labor. The sole effect this legislation has on the Department of Labor is that one category of cases presently handled by that agency – namely, private sector workmen's compensation claims arising in the District of Columbia – no longer will be administered by the Secretary of Labor. However, in light of the congressional mandate to vest the local government with authority to legislate on local matters, the ability of the Council to enact local legislation which decreases the workload of federal agencies presently charged with local responsibilities does not constitute a proscribed exercise of authority over such agencies within the meaning of § 1-233(b).

IV

The Greater Washington Board of Trade, an incorporated trade association representing 1,400 retail and commercial firms doing business in the District of Columbia, also appeals the trial court's denial of its application

to intervene. The Board sought intervention as of right[4] or in the alternative, permissive intervention.[5] Although the court rendered its decision on the validity of the Workers' Compensation Act on September 26, 1980, the Board of Trade did not seek to intervene until a week after the court's ruling. Despite this delay, the court did not base its decision on the timeliness factor. *See Vale Properties, Ltd. v. Canterbury Tales, Inc.*, D.C. App., 431 A.2d 11, 15 (1981). Rather, as to Super. Ct. Civ. R. 24(a) (intervention of right), denial was premised upon the court's finding that appellant's interest was adequately represented by the District of Columbia. It stated:

> A careful review of the position taken by the intervenors does not reveal any conflict of interest or any essential difference in their position from that taken by the District of Columbia. What distinctions do exist involve primarily rhetorical

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[4]Super. Ct. Civ. R. 24(a) states in part:

> Upon timely application anyone shall be permitted to intervene in an action: * * * (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

See Vale Properties, Ltd. v. Canterbury Tales, Inc., D.C. App., 431 A.2d 11, 14-15 (1981; *Calvin-Humphrey v. District of Columbia*, D.C. App., 340 A.2d 795, 798 (1975).

[5]Super. Ct. Civ. R. 24(b) provides in pertinent part:

> Upon timely application anyone may be permitted to intervene in an action: * * * (2) when an applicant's claim or defense and the main action have a question of law or fact in common . . . . In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

> differences, shifts in emphasis or variations in the choice of supporting authorities. Nothing in the moving papers submitted by the Intervenors convinces the Court that it should act otherwise than it has already done, or that it should alter or amend the position already taken in this cause. * * * The fact that the Court ultimately disagrees with the Defendant's [the District of Columbia's] position in no way diminishes the Court's respect for that position, nor the Court's conviction that the applicant's interest has been, is, and will be adequately and ably represented by the District of Columbia.

The court went on to rule that the circumstances presented did not warrant a different result with respect to Super. Ct. Civ. R. 24(b) (permissive intervention).

The Board of Trade contends that the trial court erred in denying its aplication for leave to intervene as of right, because the interest represented by the District government was different from the interest it sought to represent. Appellant asserts that the interest represented by the District involved only the general governmental interest of defending a local legislative anactment, while the Board sought to represent the peculiar economic interests of its constituency. The Board argues that since neither of the parties below presented any evidence bearing on the economic impact of the existing law on local employers, nor developed the legislative history of the Longshoremen's Act to the extent the Board sought to, it should have been allowed to present these matters to the court's attention.

In reviewing the denial of a motion to intervene as of right, we will reverse only if we conclude that a timely applicant was entitled to intervene as of right. *Vale Proper-*

ties, Ltd. v. Canterbury Tales, Inc., supra, 431 A.2d at 14. In *Calvin-Humphrey v. District of Columbia,* D.C. App., 340 A.2d 795, 800 (1975), we stated that in cases in which the government is a party, the right to intervene on the side of the government should not be granted lightly, for "[i]n most cases we will presume that representation by such authorities is adequate, especially when the issue in controversy is one of policy vested in the discretion of the city government." The Board of Trade did not make the kind of showing necessary under *Calvin-Humphrey* to overcome the presumption that the District adequately was representing its interest. Appellant sought neither to assert a different claim or defense nor to obtain an outcome different from that sought by the District. We conclude that the Board of Trade and the District government sought to present the same claim, *i.e.,* the authority of the Council to legislate on workmen's compensation for the private employment sector, and that appellant's interest was represented adequately by the government.

The Board of Trade attempted to present evidence concerning the economic impact of the Longshoremen's Act on local employers, as well as some legislative materials, to justify the action taken by the Council with respect to the Workers' Compensation Act. There is no indication that such date would have had any impact upon the decision of the trial court. The authority of the local legislature to enact the Workers' Compensation Act is derived solely from the Self-Government Act, regardless of the Act's effect on annual premiums paid by employers for workmen's compensation insurance. Moreover, as to the additional legislative materials proffered by the Board of Trade, we note that in considering whether to grant its application to intervene, the trial court reviewed that material and nevertheless found nothing to change the position it already had taken in the case. The trial court

did not err in denying the Board of Trade's application for intervention as of right pursuant to Super. Ct. Civ. R. 24(a). Furthermore, given the facts and circumstances of this case, the court did not abuse its discretion in denying appellant permissive intervention under Super. Ct. Civ. R. 24(b).

Affirmed in part;
reversed in part.

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 80-1311

DISTRICT OF COLUMBIA, APPELLANT,

v.

THE GREATER WASHINGTON CENTRAL LABOR COUNCIL, APPELLEE.

FOOD AND ALLIED SERVICE TRADES COUNCIL OF METROPOLITAN WASHINGTON, INTERVENOR.

No. 80-1312

THE GREATER WASHINGTON BOARD OF TRADE, APPELLANT,

v.

DISTRICT OF COLUMBIA, ET AL., APPELLEES.

Before: NEWMAN, *Chief Judge*; KELLY, KERN, NEBEKER, MACK, FERREN, PRYOR,* and BELSON, *Associate Judges*; and GALLAGHER,* *Associate Judge, Retired.*

Filed April 28, 1982

ORDER

On consideration of intervenor's petition for rehearing en banc and of the petition for rehearing and/or rehearing en banc filed by the Greater Washington Central Labor Council, it is

ORDERED for the merits division * that the petition for rehearing is denied. It appearing that there is an evenly divided vote among the judges in active service with this court, it is

FURTHER ORDERED that the petitions for rehearing en banc are denied.

PER CURIAM

Statement of *Associate Judge* BELSON, with whom *Associate Judges* KERN, NEBEKER, and FERREN join, concurring:

I favor rehearing en banc in this case. The plain fact is that the District of Columbia Workers' Compensation Act of 1979 [1] has effectively transferred a class of cases from the federal courts to the District of Columbia courts.[2]

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[1] D.C. Law 3-77, 27 D.C. Reg. 2503 (1980) (codified at D.C. Code 1981, §§ 36-301 *et seq.*).

[2] Prior to the enactment of the District of Columbia Workers' Compensation Act, workmen's compensation for the District of Columbia was governed by the Longshoremen's and Harbor Workers' Compensation Act. 33 U.S.C. §§ 901 *et seq.* (1976). D.C. Code 1973, § 36-501. The United States Secretary of Labor was responsible for administering the program. *Id.*, § 939. The United States Court of Appeals for the circuit in which the injury occurred had jurisdiction to review final orders of the Benefits Review Board. *Id.*, § 921(c). Jurisdiction to enforce the awards was vested in the United States District Court for the district in which the injury occurred. *Id.*, § 921(d). Under the new statutory scheme, that jurisdiction, to the extent it includes the review and enforcement of workman's compensation awards for private employees in the District of Columbia, has been transferred to the D.C. Court of Appeals and the Superior Court, respectively. D.C. Code 1981, §§ 36-322(b)(3), -322(c).

It may well be that most or all of the members of the court en banc would adopt the rationale and result of the division's carefully reasoned opinion confirming the power of the District of Columbia Council to adopt the disputed legislation. However, if this court is to render a decision which confirms the authority of the Council to transfer cases from the federal system to the District of Columbia system, I feel that it should be rendered by the court en banc rather than by a division.

Office - Supreme Court, U.S.
FILED
AUG 25 1982
ALEXANDER L. STEVAS,
CLERK

BRIEF FOR RESPONDENT IN OPPOSITION

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

No. 82-116

GREATER WASHINGTON CENTRAL LABOR COUNCIL, *Petitioner,*

v.

DISTRICT OF COLUMBIA, *Respondent.*

No. 82-146

FOOD AND ALLIED SERVICES TRADE COUNCIL OF METROPOLITAN WASHINGTON, *Petitioner,*

v.

DISTRICT OF COLUMBIA, *Respondent.*

On Petition for a Writ of Certiorari to the District of Columbia Court of Appeals

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Corporation Counsel, D.C.
Counsel of Record for Respondent

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Washington, D.C. 20004

QUESTION PRESENTED

Whether the District of Columbia Court of Appeals erred in holding that, under the District of Columbia Self-Government and Governmental Reorganization Act of 1973, P.L. 93-198, 87 Stat. 774 (1974), the Council of the District of Columbia properly repealed a Congressionally-enacted statute applicable solely to the District of Columbia, namely the Act of May 17, 1928 whereby Congress had provided workers' compensation for employees in employments in the District of Columbia, by enacting new local legislation providing for workers' compensation.

INDEX

SUBJECT INDEX

	Page
Question Presented	1
Statement	2
Reasons for Denying the Writ	5
Conclusion	12

CASES CITED

Cardillo v. *Liberty Mutual Insurance Co.* (1947), 330 U.S. 469	11
District of Columbia v. *Thompson Co.* (1953), 346 U.S. 100	6, 7, 8
Gudmunson v. *Cardillo* (D.C. Cir., 1942), 126 F. 2d 521	9
Matheson v. *Branch Bank of State of Alabama* (1849), 48 U.S. (7 How.) 260	6
Pernell v. *Southall Realty* (1974), 416 U.S. 363	5
United States v. *Ortiz* (1975), 422 U.S. 981	6

CONSTITUTION OF THE UNITED STATES CITED

Article I, Section 8, Clause 17	6

UNITED STATES CODE, 1976 CITED

Title 33, Sections 901 et seq.	2
Title 33, Section 903(a)	8
Title 33, Section 921(c)	2
Title 33, Section 921(d)	2, 10
Title 33, Section 939	2

ACT OF CONGRESS CITED

Act of May 17, 1928, 45 Stat 600, 615 (1928)	passim
District of Columbia Self-Government and Governmental Reorganization Act of 1974, Pub. L. 93-198, 87 Stat. 774 (1974)	passim
Section 102(a)	7
Section 302	2
Sections 601 - 603	2, 7

ACT OF CONGRESS CITED (Cont.)

Section 602(a)(3) 3, 4
Section 602(a)(4) 2
Section 602(a)(8) 2, 5
Section 602(a)(9) 11
Section 602(b) 3

DISTRICT OF COLUMBIA CODE, 1981 CITED

Section 1-201(a) 7
Section 1-204 7
Section 1-232(a)(9) 11
Section 23-101(c) 11
Sections 36-301 et seq. 3
Section 36-303 3
Section 36-345 (1982 Supp.) 3

DISTRICT OF COLUMBIA CODE, 1973 CITED

Section 36-501 4
Sections 36-501 - 36-504 3

ACTS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA CITED

District of Columbia Workers' Compensation Act of 1979, D.C. Law 3-77 ..... passim

D.C. Act 4-161 (1982), 29 D.C. Reg. 1179 (March 19, 1982) 3

OTHER AUTHORITIES CITED

27 D.C. Reg. 2503 (Jan. 13, 1980) 3
Home Rule for the District of Columbia: Background and Legislative History of H.R. 9056, H.R. 9682 and Related Bills Culminating in the District of Columbia and Governmental Reorganization Act, House Comm. Print. 93 Cong., 2nd Sess. (1974) 7, 8, 11

H. Rept. 93-482, 93d Cong., 1st Sess. (1973) 8
S. Rept. No. 973, 69th Cong., 1st Sess. (1926) 8
S. Rept. No. 852, 70th Cong., 1st Sess. (1928) 2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

No. 82-116

GREATER WASHINGTON CENTRAL LABOR COUNCIL, *Petitioner,*

v.

DISTRICT OF COLUMBIA, *Respondent.*

No. 82-146

FOOD AND ALLIED SERVICES TRADE COUNCIL OF METROPOLITAN WASHINGTON, *Petitioner,*

v.

DISTRICT OF COLUMBIA, *Respondent.*

On Petition for a Writ of Certiorari to the District of Columbia Court of Appeals

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BRIEF FOR RESPONDENT IN OPPOSITION

STATEMENT

Between 1921 and 1926 several bills were introduced in Congress to provide workers' compensation for employees of private employers in the District of Columbia; however, Congress was unable to agree on any one program. See S. Rep. No. 852, 70th Cong., 1st Sess. (1928) at 1-2. Congress resolved the impasse over the question in 1928 by extending to employees of private employers in the District of Columbia the provisions of the then recently enacted Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. § 901 *et. seq.* (1976), (Longshoremen's Act). Thus, in the Act of May 17, 1928, 45 Stat. 600; D.C. Code, 1973, § 36-501, Congress provided:

> The provisions of the Act entitled "Longshoremen's and Harbor Workers' Compensation Act," approved March 4, 1927, * * * shall apply in respect to the injury or death of an employee or an employer carrying on any employment in the District of Columbia, irrespective of the place where the injury or death occurs. * * *

The Longshoremen's Act is administered by the United States Secretary of Labor, 33 U.S.C. § 939. Review of administrative decisions, and enforcement of administrative orders, under the Longshoremen's Act are in the federal courts. 33 U.S.C. §§ 921 (c) and (d).

Over forty-five years later, Congress enacted the District of Columbia Self-Government and Governmental Reorganization Act of 1973, Pub. L. 93-198, 87 Stat. 774 (1974) (Self-Government Act). In Section 302 of the Self-Government Act, Congress provided that, except as specified in those provisions expressly reserving congressional authority (§§ 601-603 of the Act), "the legislative power of the District shall extend to all rightful subjects of legislation within the District * * *." Sections 602(a)(4) and (a)(8) of

the Self-Government Act prohibit the Council of the District of Columbia from legislating with respect to the courts of the District, and the federal courts in the District, respectively. Section 602 (a)(3) prohibits the Council from amending or repealing any Act of Congress which concerns "the functions * * * of the United States" and § 602 (b) provides that nothing in the Self-Government Act "shall be construed as vesting in the District Government any greater authority * * * over any Federal agency * * * than was vested * * * prior to the effective date of Title IV of this Act".

On May 6, 1980, the Council of the District of Columbia adopted the District of Columbia Workers' Compensation Act of 1979, which was signed by the Mayor on May 4, 1980, and, after the 30 day period required for congressional review, became law on July 1, 1980. D.C. Law 3-77; D.C. Code, 1981, §§ 36-301 *et. seq.* That Act provides for compensation for disability or death resulting from injury to employees of private concerns who are principally employed in the District of Columbia. D.C. Code, 1981, § 36-303. Section 46 of that law provided for the repeal of the provisions of the D.C. Code (§§ 36-501-504), which made the Longshoremen Act applicable to the District of Columbia. See 27 D.C. Reg. 2503 (Jan. 13, 1980). The new law, as adopted in July, 1980, provided that it would become effective on October 1, 1981. D.C. Code, 1981, § 36-345 (1982 Supp.). However, the legislation was subsequently amended to postpone the effective date and it took effect on July 26, 1982. D.C. Act 4-161, 29 D.C. Reg. 1179 (March 19,1982).

On July 15, 1980, the Greater Washington Central Labor Council, AFL-CIO, an organization of labor unions, and three individuals, all officers of labor organizations, brought this action against the District of Columbia seeking to have the District of Columbia Workers' Compensation Act of 1979 declared null and void as beyond the legislative authority Congress delegated to the Council of the District of Columbia in the Self-Government Act. In an oral opinion

(Pet. I, App. at 19a-35a),[1], the Superior Court issued a declaratory judgment to that effect, principally on the grounds that the legislation contravened Section 602 (a)(3) of the Self-Government Act, which provides that the Council may not amend or repeal any Act of Congress "which concerns the functions or property of the United States." The court reasoned that the 1979 Act "concerns the functions of the United States" because it concerns functions presently performed by federal officials: "[T]he performance, execution and administration is by the officials of the United States. They are functions of the United States." Pet. I. App. at 30a.

The District of Columbia appealed. On appeal the Food and Allied Services Trades Council of Metropolitan Washington, an organization of labor unions, was permitted to intervene.

In an opinion filed January 28, 1982 (Pet. I App. at 35a-57a), a three judge Division of the District of Columbia Court of Appeals unanimously ruled that, in enacting the 1979 legislation, and in thereby repealing the Congressionally - enacted 1928 local statute concerning workers' compensation, the Council of the District of Columbia had acted within the authority delegated to it under the Self-Government Act. The Court reasoned essentially that the limitations on the Council's authority in the Self-Government Act are designed to restrict the Council to legislating on local matters, and that the Workers' Compensation Act of 1979 constituted such local legislation. The Court rejected the contention that the repeal of the 1928 statute affected a"function of the United States" in contravention of Section 602(a)(3) of the Self-Government Act, reasoning that "the function of the Secretary of Labor in the administration of § 36-501 is a purely local one" (Pet. I, App. at 48a), as

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[1] The petition for writ of certiorari in No. 82-116 will be referred to herein as "Pet. I"; the petition in No. 82-146, as "Pet. II".

contrasted with "decisions made by federal officials in administering laws that are national in scope" (Id. at 45a) which are insulated from Council action by Section 602 (a)(3). The Court also rejected the contention that the Council had contravened Section 602 (a)(8) of the Self-Government Act by impermissibly affecting the jurisdiction of the federal courts.

> The Council's action merely repealed the congressional incorporation of a national law into local statutes. The United States courts retain their jurisdiction to hear claims arising under the Longshoremen's Act. Thus, by enacting the Workers' Compensation Act, the local legislature did not redefine the authority of the federal courts to rule on workmen's compensation claims under the Longshoremen's Act * * *.

(Pet. I, App. at 52a).

Both the Greater Washington Central Labor Council and the Food and Allied Service Trade Council filed petitions for rehearing en banc, which were denied by order dated April 28, 1982 (Pet. I App. at 58a-60a). Four judges joined in a statement that, while they did not necessarily disagree with "the division's carefully reasoned opinion" (Pet. I, App. at 60a), they believed the decision to be sufficiently important to warrant consideration by the full court.

The Greater Washington Central Labor Council, and the three individuals who were plaintiffs in this action, filed the petition for a writ of certiorari to review the decision of the District of Columbia Court of Appeals in No. 82-116 on July 20, 1982. The Food and Allied Services Trade Council filed its petition for a writ of ceritiorari to review that decision, No. 82-146, on July 26, 1982.

REASONS FOR DENYING THE WRIT

The Court has made it clear that it will not review the decisions of the District of Columbia Courts on local matters, absent egregious error. As stated in *Pernell* v. *Southall Realty*, 416 U.S. 363, 366, 368-369 (1974):

> This Court has long expressed its reluctance to review decisions of the courts of the District involving matters of peculiarly local concern, absent a constitutional claim or a problem of general federal law of nationwide application.
>
> * * *
>
> [T]he new court structure certainly lends additional support to our longstanding practice of not overruling the courts of the District on local law matters "save in exceptional situations where egregious error has been committed." *Fisher* v. *United States*, 328 U.S., at 476, 66 S. Ct. at 1325; *Griffin* v. *United States*, 336 U.S., at 718, 69 S.Ct., and 820. This principle, long embedded in practice and now supported by the clear intent of Congress in enacting the 1970 Court Reform Act, must serve as our guide * * *.

There is no constitutional issue in this case. While petitioners now attempt to inject constitutional concerns (namely, the Supremacy Clause) into this case (Pet. I at 11-15; Pet. II at 24), they failed to raise any constitutional question below and consequently cannot do so now. See, e.g., *United States* v. *Ortiz*, 422 U.S. 981, 898 (1975); *Matheson* v. *Branch Bank of State of Alabama*, 48 U.S. (7 How.) 260, 261 (1849).[3]

Similiarly there is no issue in this case of nationwide importance. Instead the case involves the unique relationship

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[3] In any event, these asserted constitutional questions are frivolous. The supremacy of Congress in the District of Columbia arises from Article I, Section 8, Clause 17 of the Constitution of the United States, rather than from the Supremacy Clause. The doctrine of preemption, which petitioners invoke, has no application in this context. Article I, Section 8, Clause 17 leaves no doubt that Congress has plenary authority over the District of Columbia. The question, then, is not whether Congress had occupied the field, but whether it has vacated it, by delegation to the local legislature. However, since Congress plainly can constitutionally delegate authority over workers compensation to the local legislature —— See *District of Columbia* v. *Thompson Co.*, 346 U.S. 100, 110 (1953) (Congress may delegate to the local legislature powers as broad as the police powers of a state) —— the sole question here is the extent to which Congress did so in the Self-Government Act. That, of course, is simply a question of statutory interpretation.

of the District of Columbia to the United States, and presents issues which only arise because of the peculiar historical circumstances that, rather than creating a special workers compensation system for the District of Columbia, Congress provided that the previously—created federal Longshoremen's Act should also serve that local purpose.

There certainly was no egregious error here. In enacting the Self-Government Act, Congress stated that its purpose was "to the greatest extent possible * * * [to] relieve Congress of the burden of legislating upon essentially local District matters." Section 102(a) of the Self-Government Act codified as D.C. Code, 1981, § 1-201(a). Therefore Congress provided in Section 302 of the Self-Government Act "Except as provided in Section 601, 602, and 603, the legislative power of the District shall extend to all rightful subjects of legislation within the District. * * * " D.C. Code, 1981, § 1-204. This Court has previously interpreted the language "rightful subjects of legislation" to delegate power "as broad as the police power of a state." *District of Columbia* v. *Thompson Co., supra*, 346 U.S. at 110. Congress consciously chose that language to indicate that it was delegating all its powers over local matters except those specifically reserved.[3]

[3] Congressman Brock Adams, the Chairman of the Subcommittee that drafted the language, explained it as

> saying basically that Congress transfers to the local government all legislative powers. *Of course, they have the power to legislate now as any State* or City government has under the Constitution.
>
> Later, in the bill, there is a reservation for the Federal Government to also legislate just like a State Legislature can legislate on city matters if it wants to or can come in and change a specific city charter.
>
> *We made a blanket transfer of power here* because this is authorized by the Constitution and what it does, it then allows the City Government to function as a City State and pass whatever legislation is necessary.

Home Rule for the District of Columbia: Background and Legislative History of H.R. 9056, H.R. 9682 and Related Bills Culminating in the District of Columbia and Governmental Reorganization Act, House Comm. Print. 93 Cong., 2d Sess. (1974) (hereinafter "Home Rule History"), p. 1034 (emphasis supplied).

(Footnote continued on page 8)

There can be no serious dispute that the matter of workers' compensation for employees of private concerns who are principally employed in the District of Columbia is essentially a local District matter. Workers' compensation for private employees has always been considered essentially a local concern. Thus Congress only enacted Federal provisions for such workers' compensation, namely, the Longshoremen's Act, when this Court held that such workers' compensation could not be provided for maritime employees under state law.[4] Even then, Congress only provided federal protection to the extent local authorities could not do so.[5]

Nor is there any serious question that the workers' compensation legislation Congress enacted for the District of

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[3] continued from preceding page

The analysis of what the Constitution authorized Congress to do, prepared at Congressman Adams' request, is contained in the appendix to the House Committee Report, H. Rept. 93-482, 93rd Cong., 1st Sess., (1973); Home Rule History at 1498-1503. That analysis commences with, and is essentially premised on, *District of Columbia* v. *Thompson Co., supra.*

[4] The Senate Committee report on the Longshoremen's Act., No. 973, 69th Cong., 1st Sess. (1926) stated (at p.16):

> The committee deems it unnecessary to comment upon the modern change in the relation between employers and employees establishing systems of compensation as distinguished from liability. Nearly every State in the Union has a compensation law through which employees are compensated for injuries occuring in the course of their employment without regard to negligence on the part of the employer or contributory negligence on the part of the employee. *If longshoremen could avail themselves of the benefits of State compensation laws, there would be no occasion for this legislation;* but, unfortunately, they are excluded from these laws by reason of the character of their employment; and they are not only excluded but the Supreme Court has more than once held that Federal regulation can not, constitutionally, be enacted that will apply State laws to this occupation. (*Southern Pacific Co.* v. *Jensen*, 244 U.S. 205; *Knickerbocker Ice Co.* v. *Stewart*, 253 U.S. 149; *Washington* v. *Dawson & Co.*, 264 U.S. 219.) [Emphasis supplied.]

[5] Thus 33 U.S.C. § 903(a) provided:

> • • • Compensation shall be payable *only* if disability or death results from an injury occuring upon the navigable waters of the United States (including any dry dock) and *if recovery for the disability or death through workmen's compensation proceedings may not validly be provided by State law.* [Empasis supplied].

Columbia in 1928 was local legislation. As the District of Columbia Court of Appeals stated below:

> The Workmen's Compensation Act of 1928 is a local law enacted by Congress which was restricted in its application "exclusively in or to the District," rather than a federal law which is national in scope.
>
> * * *
>
> [T]he Act always has been regarded by the courts as a "local act" and construed as a state law. See generally *Thomas* v. *Washington Gas Light Co.*, 448 U.S. 261, 266 (1980) (plurality opinion); *Cardillo* v. *Liberty Mutual Insurance Co.*, 330 U.S. 469, 476 (1947); *Director, Office of Workers' Compensation Programs* v. *National Van Lines, Inc., supra*, 198 U.S. App. D.C. at 245 n. 20, 613 F.2d at 978 n. 20.

See also *Gudmundson* v. *Cardillo*, 126 F.2d 521, 525 (D.C. Cir. 1942) ("True enough, the language and provisions of the national Act are made applicable to the District, but the two Acts are wholly separate and distinct, for the reason that in the one Congress was exercising the judicial powers conferred under Art. III, whereas in the other —— the local act —— Congress was exercising the powers granted in Sec. 8 of Art. I * * * to provide, for the general welfare of citizens within the District of Columbia * * * *").

Accordingly, workers' compensation is precisely the sort of local matter that Congress entrusted to the Council of the District of Columbia in the Self-Government Act. Furthermore, as the District of Columbia Court of Appeals demonstrated, none of the limitations relied upon by petitioners that Congress placed on the Council in the Self-Government Act preclude the Council from legislating on this local matter as it did.

Petitioners assert otherwise, arguing principally that the District of Columbia Court of Appeals has permitted a local legislature to limit the jurisdiction of the federal

courts, and impermissibly to interfere with a federal function, namely, the administration of the 1928 local statute by the United States Secretary of Labor. Neither contention has force.

In repealing the District of Columbia Workers Compensation Act which Congress passed in 1928, the Council did not affect the "power" or "jurisdiction" of the federal courts. The congressionally-enacted local law which the Council repealed did not purport to establish jurisdiction in the federal courts; it only defined a new category of cases as falling within a grant of judicial power that Congress had previously made. Thus, the 1928 Act (Pet. I App. at 5a-6a) does not contain one word about courts. It merely defines claims (namely, those involving "the injury or death of employees or an employer carrying on any employment in the District of Columbia * * *") that will be deemed to fall within "[t]he provisions of the Longshoremen's and Harbor Worker's Compensation Act * * *." The previously-enacted Longshoremen's Act had created jurisdiction in the courts. Thus, 33 U.S.C. §921(c) provides:

> Any person adversely affected or aggrieved * * * may obtain a review * * * *in the United States Court of Appeals* in the circuit in which the injury occurred, by filing * * * a written petition * * *. *Upon such filing, the court shall have jurisdiction* of the proceedings * * *." [Emphasis supplied.]

In repealing the 1928 local legislation, the Council did not purport to, and did not, amend, modify, or repeal that grant of jurisdiction in the Longshoremen's Act. Accordingly, the Council's action challenged here plainly did not affect the "power" or "jurisdiction" of the federal courts.

As the District of Columbia Court of Appeals demonstrated, the function performed by the United States Secretary of Labor in administering the 1928 legislation for the District of Columbia "is a purely local one" (Pet. I App. at 48a). That conclusion is required by this Court's ruling

that the 1928 Act is valid only insofar as it serves "the District's legitimate interest * * * *" *Cardillo* v. *Liberty Mutual Insurance Co.* 330 U.S. 469, 476 (1974). Furthermore, as the Court of Appeals also pointed out (Pet. I App. at 53a), the sole effect of the Council legislation at issue here on the United States Department of Labor is to decrease its workload. However, it is plain in the Self-Government Act Congress did not intend to prohibit the Council from enacting local legislation merely because in doing so the Council would affect the workload of federal officials performing local functions. Thus the United States Attorney is charged with prosecuting virtually all major crimes in the District of Columbia. D.C. Code, 1981, § 23-101(c). However, § 602(a)(9) of the Self-Government Act expressly comtemplates Council changes of the criminal provisions (i.e., Titles 22 to 24) of the D.C. Code. D.C. Code, 1981, § 1-232(a)(9). See also Home Rule History, *supra*, p. 3013 ("[T]he Conference Committee also agreed to transfer authority to the Council to make changes in Titles, 22, 23 and 24 of the District of Columbia Code * * *"). But it is obvious that such power—to create new crimes and repeal old criminal provisions—has collateral effects on the workload of the United States Attorney. Therefore it seems plain that Congress did not intend to prohibit the Council from enacting local legislation merely because the workoad of federal officials performing local functions would be affected.

In sum, then, this case involves local legislation on a matter of local concern of precisely the kind Congress has plainly delegated to the Council of the District of Columbia in the Self-Government Act, and no significant federal interests are involved. It does not warrant the exercise of this Court's jurisdiction to review on writ of certiorari.

CONCLUSION

The petitions for writs of certiorari in Nos. 28-116 and 82-146 should be denied.

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Consolidated Case Nos. 82-116 and 82-146

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

GREATER WASHINGTON CENTRAL LABOR COUNCIL

and

FOOD AND ALLIED SERVICE TRADE COUNCIL
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Petitioners,

v.

DISTRICT OF COLUMBIA,

Respondent.

On Petitions For Writ Of Certiorari To The District Of Columbia Court Of Appeals

THE GREATER WASHINGTON BOARD OF TRADE MOTION FOR LEAVE TO INTERVENE AS A RESPONDENT OR, IN THE ALTERNATIVE, TO FILE A BRIEF AS *AMICUS CURIAE*

and

BRIEF AS INTERVENOR-*AMICUS CURIAE* IN SUPPORT OF RESPONDENT

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PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D.C.

QUESTIONS PRESENTED

1. Whether Congress, in enacting the District of Columbia Self-Government and Governmental Reorganization Act, authorized the Council of the District of Columbia to adopt a workers' compensation program for private employees in the District of Columbia.

2. Whether enactment of the Workers' Compensation Act by the Council of the District of Columbia violated the limitations on the Council's legislative authority enumerated in the District of Columbia Self-Government and Governmental Reorganization Act, that forbid the Council from enacting legislation that affects the authority and jurisdiction of federal agencies and officials.

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DISTRICT OF COLUMBIA,

Respondent.

**On Petitions For Writ Of Certiorari To
The District Of Columbia Court Of Appeals**

THE GREATER WASHINGTON BOARD OF TRADE MOTION FOR LEAVE TO INTERVENE AS A RESPONDENT OR, IN THE ALTERNATIVE, TO FILE BRIEF AS *AMICUS CURIAE*

The Greater Washington Board of Trade ("the Board") moves for leave to intervene as a party-respondent or, in the alternative, to file a brief as *amicus curiae* pursuant to Supreme Court Rule 36. In support of this motion the Board states the following:

Statement Of Facts

In 1980 the Council of the District of Columbia enacted, and the Mayor approved, the District of Columbia Workers' Compensation Act of 1979 ("the Act").*

Later that year, the Greater Washington Central Labor Council ("the Labor Council") initiated a suit in the Superior Court of the District of Columbia contending that in enacting the Act the Council had exceeded its authority under the District of Columbia Self-Government and Governmental Reorganization Act, Pub. L. 93-198, codified in scattered sections of D.C. Code Ann. (1981) ("the Self-Government Act"). The Superior Court agreed with the Labor Council, and held the Act was *ultra vires*. The Board then moved to intervene as a defendant, but the Superior Court denied the Board's motion because of its view that the District of Columbia had adequately represented the Board's interests. See *District of Columbia* v. *Greater Washington Central Labor Council*, 442 A.2d 110, 114-15 (D.C. 1982).

The District of Columbia appealed the ruling on the merits, and the Board appealed the denial of its motion to intervene, to the District of Columbia Court of Appeals. That court consolidated the appeals, and permitted the Board to participate fully in the consolidated proceedings. It also permitted the Food and Allied Service Trade Council ("the Trade Council") to intervene as an appellee, notwithstanding the Trade Council had not sought to intervene in the trial proceedings. Thereafter, the Court of Appeals reversed the Superior Court's decision on the merits, but held that the denial of the Board's motion to intervene had not been an abuse of discretion. *Id.*, 442 A.2d, at 119-20.

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* D.C. Law 3-77, codified at D.C. Code Ann. § 36-301 *et seq.* (1981).

Although it believes the rulings below regarding its motion to intervene were in error the Board does not seek review of those rulings. However, because it opposes granting the petitions for a writ of certiorari, the Board respectfully moves this Court for leave to intervene in this proceeding or, in the alternative, for leave to file a brief as *amicus curiae*.

ARGUMENT

A

The Court Should Permit The Board To Intervene Because Otherwise Substantial Interests Of The Board Might Be Prejudiced.

This Court has permitted intervention in proceedings before it when otherwise the applicant's rights might be prejudiced. *See, e.g., United States* v. *Terminal Railroad Association*, 236 U.S. 194, 199 (1915) ("intervening petitioners . . . are entitled to be originally heard concerning the settlement of the decree insofar as it might operate prejudicially to their rights"). *See also Hunter* v. *Ohio* ex rel. *Miller*, 396 U.S. 879 (1969) (permitting petitioner to intervene but denying *certiorari*); *Banks* v. *Chicago Grain Trammers Association, Inc.*, 389 U.S. 813 (1967) (permitting petitioner to intervene and granting *certiorari*); *Eastern-Central Motor Carriers Association* v. *United States*, 321 U.S. 194, 198 n.5 (1944) (permitting intervention); *cf. Mullaney* v. *Anderson*, 342 U.S. 415, 416-17 (1952) (permitting intervention to remove jurisdictional issue from controversy).

Failure to permit intervention in this instance will jeopardize vital interests of the Board and its members. The Board is an association of employers, with its princi-

pal place of business in the District of Columbia. Its membership consists of more than 1,400 firms doing business in the metropolitan area. These members employ more than 60% of the private workforce within the District of Columbia.

Almost all of the Board's members are subject to the District of Columbia's workers' compensation laws. Those who provide coverage under these laws do so either by purchasing insurance at an estimated annual premium cost of more than $100 million, or as self-insurers who annually expend tens of millions of dollars in payment of benefits. Moreover, the Board as an employer is also subject to these laws. Thus, the Board and its members have a substantial economic interest in, and are vitally affected by, whatever system of workers' compensation is in effect in the District of Columbia. All, therefore, have a substantial interest in petitioners' challenge to the Act.

The Board and its members also have a substantial interest in the scope of the Council's legislative authority. That scope is implicated by these proceedings; thus the disposition of the subject petitions may have a broad, long range effect on the Board's economic interest.

The Board's interests and those of its members differ from those of the District of Columbia. The District is concerned with protecting its institutional interests, only. The Board and its members, however, seek to protect their private economic interests. It was precisely because of such differences between the interests of governmental and private parties that this Court held in *Trbovich* v. *United States*, 404 U.S. 528, 538-39 (1977), it was error to deny the United Mine Workers' application to intervene as a co-party with the Secretary of Labor.

In representing these particular interests, the Board has advanced a number of arguments not presented by the District of Columbia. Many of these arguments should be of assistance to this Court, particularly because the Board's contentions were adopted and applied by the Court of Appeals. Indeed, that court permitted the Board to participate fully at every stage of the appellate proceeding as though the Board was a party. See Supreme Court Rule 19.6 ("All parties to the proceeding in the court whose judgment is sought to be reviewed shall be deemed parties in this Court . . . .)" For these reasons the Board should be permitted to intervene, here, as a party-respondent.

B

In The Event That This Court Should Deny The Board's Motion For Leave To Intervene, The Court Should, In The Alternative, Grant The Board Leave To File Its Brief As Amicus Curiae In Opposition To The Petitions For Certiorari.

Respondent does not object to the Board being permitted to file the accompanying brief as *amicus curiae*. Petitioners, however, have withheld their consent to the Board's participation in any capacity. The Board believes that its brief may aid the Court in determining whether to deny the petitions. Therefore, for all of the reasons set forth above, if the Court does not permit the Board to intervene it should grant leave to the Board to file its brief as *amicus curiae*.

CONCLUSION

For the foregoing reasons this Court should allow the Board to intervene as a party-respondent, or in the alternative, to file its brief as *amicus curiae* pursuant to Supreme Court Rule 36.

Respectfully submitted,

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TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	ii, *supra*
INTEREST OF AMICUS CURIAE	1
STATEMENT OF THE CASE	2
SUMMARY OF REASONS FOR DENYING THE PETITIONS	8
REASONS FOR DENYING THE PETITIONS	9
A. Petitioners Have Failed To Present Any Question Warranting The Exercise Of This Court's Discretionary Jurisdiction	9
B. The District Of Columbia Court Of Appeals Properly Decided That The Self-Government Act Authorized The Council To Enact A Workers' Compensation Program For Private Employees In The District Of Columbia	10
C. The District Of Columbia Court Of Appeals Properly Decided That The Workers' Compensation Act Did Not Repeal An Act Of Congress Concerning Functions Of The United States	12
D. The District Of Columbia Court Of Appeals Properly Decided That The Workers' Compensation Act Did Not Increase The Jurisdiction Of The District Of Columbia Courts	15
E. The District Of Columbia Court Of Appeals Properly Decided That The Workers' Compensation Act Did Not Affect The Jurisdiction Of The United States Courts In The District Of Columbia	17
CONCLUSION	18

TABLE OF AUTHORITIES

CASES: Page

Cardillo v. *Liberty Mutual Insurance Co.*, 330 U.S. 469 (1947) 6

Christianson v. *King County*, 239 U.S. 356 (1915) ... 10

Crowell v. *Benson*, 285 U.S. 22 (1932) 2, 10, 17

District of Columbia v. *John R. Thompson Co.* 346 U.S. 100 (1953) 10

Fonseca v. *Prann*, 282 F.2d 153 (1st Cir. 1960) 10

Gudmundson v. *Cardillo*, 126 F.2d 521 (D.C. Cir. 1942) 3, 6, 14

Hobson v. *Hansen*, 265 F. Supp. 18 (D.D.C. 1967) ... 14

Keller v. *Potomac Electric Power Co.*, 261 U.S. 428 (1923) 14, 17

Knickerbocker Ice Company v. *Stewart*, 253 U.S. 149 (1920) 2

Palmore v. *United States*, 411 U.S. 389 (1973) 15, 17

Southern Pacific Co. v. *Jensen*, 244 U.S. 205 (1917) .. 2

Sun Ship, Inc. v. *Pennsylvania*, 447 U.S. 715 (1980) 2, 10

The Genesse Chief v. *Fitzhugh*, 53 U.S. (12 How.) 443 (1851) 17

Thomas v. *Washington Gas Light Co.*, 448 U.S. 261 (1980) 6

Thompson v. *United States*, 548 F.2d 1031 (D.C. Cir. 1976) 15

Whalen v. *United States*, 445 U.S. 684 (1980) 9

UNITED STATES CONSTITUTION

Art. I, § 8, cl. 17 .....3, 17

Art. III, cl. 2 .....2, 17

Table of Authorities Continued

Page

STATUTES

Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. (1976)

§ 901 et seq. (1976) 2
§ 901(8) 2
§ 921(c) 3
§ 921(d) 3
§ 939 3

United States Code (1976)

5 U.S.C. § 8101 *et seq.* 4
5 U.S.C. § 8101(1)(D) 2
5 U.S.C. § 8139 2

District of Columbia Self-Government and Governmental Reorganization Act, D.C. Code Annotated (1981)

§ 1-201 *et seq.* 4
§ 1-201(a) 4, 10
§ 1-201(b) 4, 11
§ 1-204 4
§ 1-204(e) 4
§ 1-233(a) 5, 7, 8
§ 1-233(a)(3) 5, 8, 12, 13
§ 1-233(a)(4) 5, 8, 15, 16
§ 1-233(a)(8) 5, 8, 16, 17
§ 1-233(b) 5, 7, 8
§ 1-233(c)(1) 6

Workmen's Compensation Law of the District of Columbia, D.C. Code Annotated (1973)

§ 36-501 et seq. 3

Table of Authorities Continued

	Page
Workers' Compensation Act of 1979, D.C. Code Annotated (1981)	
§ 36-301 *et seq.*	6
§ 36-303	6
§ 36-322(b)(3)	6
§ 36-322(c)	6
District of Columbia Administrative Procedure Act, D.C. Code Annotated (1981)	
§ 1-1501 *et seq.*	15
District of Columbia Court Reform and Criminal Procedure Act of 1970, D.C. Code Annotated (1981)	
§ 11-101 *et seq.*	15
D.C. Code Annotated (1981)	
Pub. L. 93-140, D.C. Code 1981, note preceding § 36-301	3
OTHER AUTHORITIES:	
United States Supreme Court Rule 17	9
27 D.C. Reg. 2974 (1980)	6
H.R. Rep. No. 482, 93d Cong., 1st Sess. 1-2 (1973)	4, 11
H.R. Rep. No. 859, 69th Cong., 1st Sess. 1 (1926)	3
S. Rep. No. 852, 70th Cong., 1st Sess. 1 (1928)	3
House Comm. on the District of Columbia, 93d. Cong., 2d. Sess., D.C. Executive Branch Proposal For Home Rule: Organic Act (Comm. Print 1973)	13
House Comm. on the District of Columbia, 93d. Cong., 2d. Sess., Title VI Reservation of Congressional Authority (Comm. Print 1973)	13
118 Cong. 36382, 36386 (14 Oct. 1972)	6
Larson, The Law of Workmen's Compensation, §§ 5.20, 5.30 (78ed.)	10

Consolidated Case Nos. 82-116 and 82-146

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

GREATER WASHINGTON CENTRAL LABOR COUNCIL

and

FOOD AND ALLIED SERVICE TRADE COUNCIL OF METROPOLITAN WASHINGTON,

Petitioners,

v.

DISTRICT OF COLUMBIA,

Respondent.

On Petitions For Writ Of Certiorari To The District Of Columbia Court Of Appeals

THE GREATER WASHINGTON BOARD OF TRADE BRIEF IN SUPPORT OF RESPONDENT

INTEREST OF AMICUS CURIAE

Amicus curiae is The Greater Washington Board of Trade ("the Board"). The Board, an association of 1,400 employers, has its principal place of business in the District of Columbia. It and its members employ more than 60% of the private workforce in the District of Columbia, and annually expend more than $100 million to provide workers' compensation benefits. Almost all of the Board's members were subject to the District of Columbia Workmen's Compensation Law, and now are subject to the superseding District of Columbia Workers' Compensation Act that petitioners challenge, here.

STATEMENT OF THE CASE

A

Public employees of the District of Columbia government were first protected by a workers' compensation program in 1919. 5 U.S.C. §§ 8101(1)(D), 8139 (1976). No similar program existed, however, for their counterparts in the local private sector until 1927, when Congress enacted the Longshoremen's and Harbor Workers' Compensation Act ("the Longshoremen's Act"), 33 U.S.C. § 901 *et seq.* (1976).

The Longshoremen's Act was enacted in discharge of the exclusive authority granted to the federal government by Article III, cl. 2 of the Constitution over "all Cases of admiralty and maritime Jurisdiction," *Crowell* v. *Benson*, 285 U.S. 22, 40-41 (1932), to protect employees engaged in the maritime industry. *Id.* It represented the first successful effort by Congress to respond to a social problem that it regarded as essentially local in nature. *Id.*, 285 U.S., at 40 n.5. In these prior efforts Congress had sought to provide workers' compensation coverage for maritime employees by, *inter alia*, delegating authority to the States to enact or administer similar legislation; however, each effort was held to represent an unconstitutional effort to transfer what was regarded as a nondelegable federal power conferred by Article III. See *Southern Pacific Co.* v. *Jensen*, 244 U.S. 205 (1917); *Knickerbocker Ice Company* v. *Stewart*, 253 U.S. 149 (1920). Thus it was only because of this Court's since modified views as to the geographical reach of Article III, cl. 2, see, *Sun Ship, Inc.* v. *Pennsylvania*, 447 U.S. 715 (1980), that the Longshoremen's Act was enacted. *Crowell* v. *Benson*, *supra*, 285 U.S., at 40 n.5.

Under the Longshoremen's Act the District of Columbia is defined as a State. 33 U.S.C. § 901(8)(1976). Therefore only those employees in the District of Columbia

engaged in the maritime industry have been protected by the Longshoremen's Act. See, *Gudmundson* v. *Cardillo*, 126 F.2d 521, 525 (D.C. Cir. 1942). To fill this void, and expand the class of private employees in the District of Columbia protected by workers' compensation, see S. Rep. No. 852, 70th Cong., 1st Sess., at 1 (1928); H.R. Rep. No. 859, 69th Cong., 1st Sess., at 1 (1926), in 1928 Congress enacted the "Workmen's Compensation Law of the District of Columbia" (the "Workmen's Compensation Law"), D.C. Code Ann. § 36-501 *et seq.* (1973). That law applied the provisions of the Longshoremen's Act to the District of Columbia. *Id.* But, unlike the Longshoremen's Act which Congress had enacted pursuant to its authority under Article III, the Workmen's Compensation Law was enacted as a "local act" in an exercise of Congress' plenary authority over the District of Columbia granted by Article I, sec. 8, cl. 17, *Gudmundson* v. *Cardillo*, *supra*, 126 F.2d at 525, and did *not* provide coverage for injury or death arising out of employment in the maritime industry. D.C. Code Ann. § 36-502 (1973).

However, because the Workmen's Compensation Law applied the provisions of the Longshoremen's Act, it was administered by the Secretary of Labor, see 33 U.S.C. § 939 (1976),—albeit commencing in 1973 the cost to the Secretary of Labor of administering it was paid with funds authorized in the budget for the District of Columbia. Pub. L. 93-140, D.C. Code Ann. 1981, note preceding § 36-301. For the same reason, the United States courts of appeals had authority to review compensation awards and the United States district courts had authority to enforce those awards. See 33 U.S.C. §§ 921(c), (d) (1976). Thus until enactment by the Council of the District of Columbia of the superseding legislation challenged, here, the local workers' compensation program was administered on behalf of the local government by federal officials.

B

In 1973, Congress enacted the District of Columbia Self-Government and Governmental Reorganization Act ("the Self-Government Act"), Pub. L. 93-198, (codified, as amended, in scattered sections of D.C. Code Ann. (1981), to "relieve [itself] of the burden of legislating upon essentially local matters." D.C. Code Ann. § 1-201(a) (1981). The Self-Government Act, as its full title conveys, had two primary purposes: one was to provide a form of local self-government which the electorate of the District of Columbia could elect to adopt; the other was to reorganize the existing District of Columbia government "irrespective of whether the charter for greater self-government provided for in Title IV of this Act is accepted or rejected by the registered qualified electors of the District of Columbia." Self-Government Act, D.C. Code Ann. § 1-201(b) (1981); see, also, H.R. Rep. No. 482, 93d Cong., 1st Sess., at 1-2 (1973). Thus Title II of the Self-Government Act reorganized the pre-existing local government, and transferred authority over certain local matters from federal officials to the pre-home rule District of Columbia government. One of the programs transferred to the pre-home rule local government as part of this reorganization scheme was the local workers' compensation programs for public employees of the District of Columbia government, a program that previously had been administered by the Secretary of Labor pursuant to 5 U.S.C. § 8101 *et seq.* (1976). Self-Government Act, § 204(e), 87 Stat. 783.

The self-government charter was adopted in 1974. Therefore, since then, the legislative authority of the District of Columbia has "extend[ed] to all rightful subjects of legislation within the District consistent with the Constitution of the United States and the provisions of [the Self-Government] Act," Self-Government Act, D.C.

Code Ann. § 1-204 (1981), subject to certain enumerated limitations. The only limitations which are important here are codified at D.C. Code Ann. § 1-233 (1981):

> (a) The Council shall have no authority to pass any act contrary to the provisions of this Act except as specifically provided in this Act, or to:
>
> . . . .
>
> (3) [e]nact any act, or enact any act to amend or repeal any Act of Congress, which concerns the functions or property of the United States or which is not restricted in its application exclusively in or to the District;
>
> (4) [e]nact any act, resolution, or rule with respect to any provision of Title II [of the District of Columbia Code] (relating to organization and jurisdiction of the District of Columbia courts);
>
> . . . .
>
> (8) [e]nact any act or regulation relating to the United States District Court for the District of Columbia or any other court of the United States in the District other than the District courts, or relating to the duties or powers of the United States Attorney or the United States Marshall for the District of Columbia[;]
>
> . . . .
>
> (b) Nothing in this Act shall be construed as vesting in the District government any greater authority over the National Zoological Park, the National Guard of the District of Columbia, the Washington Aqueduct, the National Capital Planning Commission, or, except as otherwise specifically provided in this Act, over any federal agency, than was vested in the Commissioner prior to January 2, 1975.

On 6 May 1980, the Workmen's Compensation Law was superseded upon the enactment by the Council of the

District of Columbia Workers' Compensation Act of 1979 (the "Act"). Following the approval of the Mayor, the Act was forwarded to Congress for review pursuant to D.C. Code Ann. § 1-233(c)(1) (1981). There was no effort in Congress to disapprove the measure, and on 1 July 1980 the Act took effect as D.C. Law 3-77. See 27 D.C. Reg. 2974 (1980).[1]

The Act, D.C. Code Ann. § 36-301 *et seq.* (1981), establishes a compensation program for death and work-related injuries suffered by employees of private businesses arising out of employment "principally localized in the District of Columbia." D.C. Code Ann. § 36-303 (1981). Any party adversely affected by a compensation award may petition for review by the District of Columbia Court of Appeals. *Id.*, § 36-322(b)(3). If an employer fails to comply with a compensation order, the order may be enforced in the Superior Court of the District of Columbia. *Id.*, § 36-322(c). In summary, under the Act the benefits program for injury and death arising out of employment "principally localized in the District of Columbia," which previously were subject to the Workmen's Compensation Law, is administered and enforced by officials of the local government; and the similar program providing benefits for those injuries and deaths which previously were covered by the Longshoremen's Act continues to be enforced by federal officials pursuant to the latter act.

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[1] The superseded Workmen's Compensation Law, which the court in *Gudmundson* referred to as a "local act," seems always to have been regarded as a "District of Columbia law." *See, e.g., Cardillo* v. *Liberty Mutual Insurance Company*, 330 U.S. 469, 479 (1947); *Thomas* v. *Washington Gas Light Company*, 448 U.S. 261, 262 (1980). Therefore, Congress, in debating the 1972 amendments to the Longshoremen's Act, believed it would be subject to the legislative authority of the District of Columbia once self-government was granted. See 118 Cong. 36382, 36386 (14 Oct. 1972).

C

In July 1980, the Greater Washington Central Labor Council ("the Labor Council") and three individuals in private employment filed an action in the Superior Court of the District of Columbia against the District of Columbia, seeking a declaratory judgment that the Act was *ultra vires*, and an injunction against its enforcement. Both sides moved for summary judgment. On 26 September 1980, the trial court ruled that the Act was *ultra vires* because barred by D.C. Code Ann. § 1-233(a) and (b) (1981), (quoted *supra*, at p. 5).

Final judgment was entered on 1 October 1980, and the District of Columbia noted a timely appeal.[2] Thereafter, the Food and Allied Service Trade Council of Metropolitan Washington ("the Trade Council") was permitted to intervene on behalf of the Labor Council. On 28 January 1982, the District of Columbia Court of Appeals reversed the decision of the trial court. *District of Columbia* v. *Greater Washington Central Labor Council*, 442 A.2d 110 (D.C. 1982).

In reversing, the Court of Appeals held that the Workmen's Compensation Law had been a "local act," and workers' compensation for private employment was a subject of local concern over which the Self-Government Act authorized the Council to legislate. It further held

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[2] The Board was not named as a party to the proceedings in the trial court. However, immediately following the trial court's decision holding the Act *ultra vires* the Board sought leave to intervene, and moved to vacate the judgment. Following the denial of its motions the Board appealed. Although the Court of Appeals held the denial of the motion to intervene was not an abuse of discretion, it permitted the Board to participate fully in the appeal as though it was a party, and adopted the Board's arguments on the merits.

that the functions which the Secretary of Labor and the federal courts had performed under the superseded legislation had been local, and not federal. It therefore concluded that enactment of the Act had not violated the limitations on the Council's authority set forth in D.C. Code Ann. §§ 1-233(a)(3), (4), (8), (b) (1981) (quoted *supra* at p. 5) because the Act did not amend the Longshoremen's Act, nor affect the authority or jurisdiction conferred on any federal officer by the Constitution or any legislation of Congress.

Thereafter, the Trade Council and the Labor Council petitioned the District of Columbia Court of Appeals for rehearing *en banc*. The court denied these petitions in an order entered on 28 April 1982. On 20 July 1982, the Labor Council petitioned the Supreme Court for a writ of certiorari. The Trade Council followed suit on 26 July 1982. Both petitions have been consolidated by the Court.

SUMMARY OF REASONS FOR DENYING THE PETITIONS

By the Self-Government Act Congress delegated to the District of Columbia its authority to legislate upon essentially local matters such as workers' compensation. Therefore, the Council for the District of Columbia was authorized to adopt the Workers' Compensation Act as superseding local worker's compensation legislation.

Petitioners argue that the Workers' Compensation Act violated several limitations on the Council's legislative authority enumerated in § 602(a) and (b) of the Self-Government Act, D.C. Code Ann. § 1-233(a),(b) (1981). In fact, however, the Act satisfies each of these limitations. The Act repealed only local legislation, and not an Act of Congress relating to a Federal function; it does not pertain to, nor affect the jurisdiction of either the District of Columbia courts or the United States courts in the

District of Columbia; nor does it grant the District of Columbia authority over a federal agency or a federal function.

Rather the Act did no more than establish a local program of workers' compensation, and authorize review and enforcement of compensation awards in the District of Columbia courts pursuant to the jurisdiction over local matters which Congress had transferred, in 1971, to those courts from the United States.

In summary, the Act neither amended the Longshoremen's Act, nor affected the authority or jurisdiction conferred on any federal officer by the Constitution or any legislation of Congress.

REASONS FOR DENYING THE PETITIONS

A

Petitioners Have Failed To Present Any Question Warranting The Exercise Of This Court's Discretionary Jurisdiction.

Petitioners advance no ground for review conceivably falling within the standards governing discretionary review on writ of certiorari. See Supreme Court Rule 17. This proceeding involves no more than the construction of the Self-Government Act, legislation which involves only a matter of purely local significance in the District of Columbia. Nor do petitioners contend that the Act offends any particular constitutional provisions. Under such circumstances, absent a clear showing of egregious error, this Court consistently has refused to exercise its jurisdiction. See *Whalen* v. *United States*, 445 U.S. 684, 687 (1980).[3] Here, there has been no showing of egregious

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[3] In *Whalen*, all members of the Court reaffirmed this principle. *Id.*, at 695-96 (White, J., concurring); *id*, at 696 (Blackmum, J., concurring); *id*, at 707 (Rehnquist, J., concurring).

error, nor is there any basis for such a showing. Therefore the petitions should be denied.

B

The District Of Columbia Court Of Appeals Properly Decided That The Self-Government Act Authorized The Council To Enact A Workers' Compensation Program For Private Employees In The District Of Columbia.

Congress passed the Self-Government Act to "relieve [itself] of the burden of legislating upon essentially local District matters." D.C. Code Ann. § 1-201(a) (1981). It therefore explicitly provided "the legislative power of the District of Columbia shall extend to all rightful subjects of legislation within the District . . ." Thus the legislative power of the District of Columbia is "as broad as the police power of a state." *District of Columbia* v. *John R. Thompson Co.*, 346 U.S. 100, 110 (1953).

Workers' compensation always has been regarded by Congress as essentially a local matter. See, *Crowell* v. *Benson*, 285 U.S. 22, 40 n.15 (1932); see, generally, Larson, The Law of Workmen's Compensation, §§ 5.20, 5.30 (78 ed.). Because it is one of "those subjects upon which [local] legislatures have been accustomed to act," *Christianson* v. *King County*, 239 U.S. 356, 365 (1915), it is as much a "rightful subject" of the legislative authority which Congress has delegated to the District of Columbia as the probate laws enacted by the territorial government that were sustained in *Christianson*, and the civil rights measures passed by the District of Columbia that were upheld in *District of Columbia* v. *John R. Thompson Co.*, *supra*. *See, also, Sun Ship, Inc.* v. *Pennsylvania*, 447 U.S. 715, 716-19 (1980); *Fonseca* v. *Prann*, 282 F.2d 153 (1st Cir. 1960) (upholding authority of Puerto Rico to enact workers' compensation laws). Therefore, the Council was authorized to enact the Act.

Nevertheless, petitioners argue that the fact of the *explicit* transfer of authority by the reorganization provision of the Self-Government Act over the local public workers' compensation program, coupled with the failure by Congress to also enumerate in the self-government provision that the local government could exercise similar authority over the pre-existing program for private employees, creates an inference that Congress did not intend to delegate to the District of Columbia any authority to legislate in respect to the latter. We submit that the most that can be inferred from this fact is that Congress did not grant as great a quantum of power to the pre-home rule government as it did in delegating self-government. Moreover, petitioners' argument is refuted by both the statutory scheme and the legislative history of the Self-Government Act.

All of the powers transferred by Title II of the Self-Government Act are enumerated. In contrast, in the self-government charter Congress delegated a broad scope of legislative power in general terms, and enumerated only the limitations on that legislative power. Therefore, it is not reasonable to conclude that the scope of the authority granted in the charter can be inferred from, or is limited by, that enumerated in the reorganization provisions.

The legislative history of the Self-Government Act clearly reflects that one of Congress' twin purposes was to implement the recommendations of the Commission on the Organization of the Government of the District of Columbia, "*irrespective of whether or not the charter for self-government [was] ratified by the local voters*," H.R. Rep. No. 482, 93d Cong., 1st Sess., 1-2 (1973) (emphasis added), and the Self-Government Act explicity so recites. D.C. Code Ann. § 1-201(b) (1981). Therefore, Title II of the Self-Government Act, entitled "Governmental

Reorganization", took effect six months prior to the effective date of the charter for self-government contained in Title IV. Self-Government Act, § 771(b), 87 Stat. 836. As Title II transferred authority over the public employee workers' compensation program to the pre-home rule government, it defies logic to argue that Congress implicitly intended to deny the home rule government authority to legislate in respect to a substantially similar, and also essentially local matter. Therefore the Court of Appeals, after also noting that "[n]othing in the . . . legislative history of the Self-Government Act indicates Congress' intent to prohibit the District from enacting legislation concerning workmen's compensation for the private sector," *District of Columbia* v. *Greater Washington Central Labor Council, supra*, 442 A.2d at 115, properly rejected petitioners' faulty logic. In summary, because the Self-Government Act provides "the legislative power of the District shall extend to all rightful subjects of legislation within the District . . . ," it cannot be denied that the Council's legislative authority extended to the subject matter of the Act.

C

The District Of Columbia Court Of Appeals Properly Decided That The Workers' Compensation Act Did Not Repeal An Act Of Congress Concerning Functions Of The United States.

Petitioners argue that the Act abolishes a "federal function," namely the authority previously exercised by the Department of Labor over private sector workers' compensation arising out of employment in the District of Columbia. Therefore, they contend the Act violates D.C. Code Ann. § 1-233(a)(3) (1981).

Petitioners' argument obviously begs the question of what is a federal function. It also assumes without apparent logic that Congress intended by § 1-233(a)(3) to

transform a local function which had been performed by a federal official prior to self-government into a function of the United States. It also ignores the legislative history of the Self-Government Act which clearly indicates that the purpose of § 1-233(a)(3), as this provision plainly reflects on its face, is to safeguard the operations of the federal government on a national level. See, *e.g.*, House Comm. on the District of Columbia, 93d Cong., 2d Sess., Title VI Reservation of Congressional Authority, at 1477 (Comm. Print 1973).[4] Therefore, it cannot be said that the functions performed by federal officials under the Workmen's Compensation Law were federal functions.

As we have noted, the Workmen's Compensation Law, which merely applied the provisions of the Longshoremen's Act to private employment in the District of Columbia, seems always to have been considered by Congress and the courts to be a local law. See *supra*, note 1. The reasons for this are apparent: Congress did not, as it might have, intend that the Longshoremen's Act would become the local workers' compensation act; it instead enacted a separate law to achieve that end, *i.e.*, the Workmens' Compensation Law. Thus as the District of

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[4] The term "federal function" appears to have originated in the District of Columbia proposal for home rule:

> The functions reserved to the federal level would be those related to federal operations in the District and to property held and used by the Federal Government for conduct of its administrative, judicial, and legislative operations; and for the monuments pertaining to the nation's past. The functions would include physical planning of these federal areas, construction and maintenance of federal buildings, and administration of federal park areas . . . House Comm. on the District of Columbia 93d Cong., 2d Sess., D.C. Executive Branch Proposal For Home Rule Organic Act, at 182 (Comm. Print. 1973).

Columbia Circuit Court of Appeals explained in *Gudmundson* v. *Cardillo*, *supra*:

> The case we have does not arise under the Longshoremen's Act, though doubtless it might if the injury had occurred on a vessel in the Potomac River, tied to a Washington dock. True enough, the language and provisions of the national Act are made applicable to the District, but the two Acts are wholly separate and distinct, for the reason that in the one Congress was exercising the judicial powers conferred under Art. III, whereas in the other—the local act—Congress was exercising the powers granted in Sec. 8 of Art. I . . . . [126 F.2d, at 525.]

Thus, while it is true that prior to the enactment of the Act both workers' compensation programs were administered by the Department of Labor, it was only when administering the program created by the Longshoremen's Act that the Department was performing a federal function. In administering the other program created by the Workmen's Compensation Law it was performing a purely local function pursuant to the plenary grant of authority to Congress over the District of Columbia. *Gudmundson* v. *Cardillo*, *supra*, 126 F.2d at 525. This assignment by Congress to federal officials of responsibility for local affairs in the District of Columbia, of course, is rooted in history. See, *e.g.*, *Keller* v. *Potomac Electric Power Co.*, 261 U.S. 428 (1923); *Hobson* v. *Hansen*, 265 F. Supp. 18 (D.D.C. 1967). And it always has been recognized that while performing such local functions these federal officials were performing a local, and not a federal function. *Id.* It follows, therefore, that by enacting the Act the Council did not legislate in respect of a federal function, nor purport to expand the authority of the local government over any federal agency.

D

The District Of Columbia Court Of Appeals Properly Decided That The Workers' Compensation Act Did Not Increase The Jurisdiction Of The District Of Columbia Courts.

Petitioners argue that the Act increased the jurisdiction of the District of Columbia courts in violation of D.C. Code Ann. § 1-233(a)(4) (1981), by conferring on those courts new jurisdiction. In fact, however, as the Court of Appeals observed in rejecting this argument, the local court's jurisdiction over such matters as will arise under the Act had been conferred by Congress as of 1971 by the enactment of the District of Columbia Administrative Procedures Act, Pub.L. 90-614, D.C. Code Ann. § 1-1501 *et seq.* (1981), and the District of Columbia Court Reform and Criminal Procedure Act of 1970, Pub.L. 91-358, D.C. Code Ann. § 11-101 *et seq.* (1981).[5] The Courts of Appeals

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[5] The Court of Appeals, in rejecting the argument that the Act affected the jurisdiction of the local courts, accurately summarized this history as follows:

> In 1970, Congress enacted the District of Columbia Court Reform and Criminal Procedure Act, D.C. Code 1981, §§ 11-101 *et seq.* (Court Reform Act), to establish a dual court system in this jurisdiction similar to the state court systems. *Thompson* v. *United States*, 179 U.S. App. D.C. 76, 79 n.14, 548 F.2d 1031, 1034 n.14 (1976). It was Congress' intention to alleviate the Article III court's burden of adjudicating local matters and thus to permit those courts to devote their attention to matters having national implications. *Palmore* v. *United States*, 411 U.S. 389, 408-09 (1973). The Court Reform Act established the District of Columbia Court of Appeals and the Superior Court of the District of Columbia and vested these courts with the authority to decide legal issues which solely affect the District of Columbia . . . . By repealing the Workmen's Compensation Law of 1928, the Council has not decreased the jurisdiction of the United States courts in the District of Columbia. Workmen's compensation for the private employment sector in the District of Columbia is a "local matter" over which the Council has authority to legislate and the local courts have jurisdiction to adjudicate. The Council's action merely repealed the con-

therefore was correct in concluding that by these acts Congress had vested in the Superior Court for the District of Columbia and the District of Columbia Court of Appeals plenary jurisdiction to enforce or, in the latter case, review the decisions of local administrative agencies such as those as will arise under the Act. *District of Columbia* v. *Greater Washington Central Labor Council, supra*, 442 A.2d at 117-18.

It, of course, is true that until passage of the Act the local courts had no occasion to rule on workers' compensation matters. Until then the responsibility concerning such matters, when they arose under the Workmen's Compensation Law, was entrusted by Congress to federal officials. But surely it cannot be said that Congress intended by § 1-233(a)(4) to restrict the jurisdiction of the local courts to only those matters about which Congress had legislated, that is to prohibit the local courts from exercising their jurisdiction over new matters regarding which Congress had not acted, but the Council in exercising its authority to legislate as to "all rightful subjects of legislation," decided to act. As this is precisely the irrational logic employed by petitioners, the Court of Appeals was correct in rejecting petitioners' argument.

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gressional incorporation of a national law into local statutes. The United States courts retain their jurisdiction to hear claims arising under the Longshoremen's Act. Thus, by enacting the Workers' Compensation Act, the local legislature did not redefine the authority of the federal courts to rule on Workmen's compensation claims under the Longshoremen's Act in violation of § 1-233(a)(8).

Id., 442 A.2d at 118.

E

The District Of Columbia Court Of Appeals Properly Decided That The Workers' Compensation Act Did Not Affect The Jurisdiction Of The United States Courts In The District Of Columbia.

Petitioners argue that the Act decreased the jurisdiction of the United States courts in the District of Columbia in violation of D.C. Code Ann. § 1-233(a)(8) (1981). The argument is supported by the mere fact that no longer can controversies arise under the Workmen's Compensation Law over which those courts had jurisdiction. The argument is obviously meritless.

Petitioners' argument is premised upon a fundamental error. Contrary to their assumption, neither the Longshoremen's Act, nor the local act applying its provisions, conferred jurisdiction on any federal court. As this Court held in *Crowell* v. *Benson*, *supra*, 285 U.S. at 49-50, citing *The Genesse Chief* v. *Fitzhugh*, 53 U.S. (12 How.) 443, 452 (1851), the jurisdiction of those courts under the Longshoremen's Act is conferred by Article III, cl. 2 which extends "The Judicial Power . . . to all Cases of admiralty and maritime Jurisdiction;" that under the Workmen's Compensation Law exists by virtue of Article I, § 8, cl. 17, *Keller* v. *Potomac Electric Power Co.*, *supra*, and Congress was free to delegate it to the local government. *Palmore* v. *United States*, *supra*. The Court of Appeals therefore was correct in rejecting petitioners' argument.

CONCLUSION

Because of the foregoing, it is respectfully submitted that the petitions for writ of certiorari should be denied.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1982

GREATER WASHINGTON CENTRAL LABOR COUNCIL,
PETITIONER
v.
DISTRICT OF COLUMBIA

FOOD AND ALLIED SERVICES TRADE COUNCIL
OF METROPOLITAN WASHINGTON, PETITIONER
v.
DISTRICT OF COLUMBIA

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

Whether the Council of the District of Columbia possessed authority under the District of Columbia Self-Government and Governmental Reorganization Act of 1973 to enact the Workers' Compensation Act of 1979, which replaces a 1928 enactment by Congress establishing a workers' compensation program for private sector employees in the District.

TABLE OF CONTENTS

Page

Statement 1

Discussion 7

Conclusion 18

TABLE OF AUTHORITIES

Cases:

Andrade v. *Jackson*, 401 A.2d 990 17

Apartment & Office Building Association v. *Washington*, 343 A.2d 323 10

Bishop v. *District of Columbia*, 411 A.2d 997 10

Capitol Hill Restoration Society, Inc. v. *Moore*, 410 A.2d 184 10

Cardillo v. *Liberty Mutual Insurance Co.*, 330 U.S. 469 9

Director, Office of Workers' Compensation Programs v. *National Van Lines, Inc.*, 613 F.2d 972, cert. denied, 448 U.S. 907 9

District of Columbia v. *John R. Thompson Co.*, 346 U.S. 100 8

District of Columbia v. *Washington Home Ownership Council, Inc.*, 415 A.2d 1349 10

Firemen's Insurance Co. v. *Washington*, 483 F.2d 1323 8

Fonseca v. *Prann*, 282 F.2d 153, cert. denied, 365 U.S. 860 9

Page

Cases—Continued:

Gudmundson v. *Cardillo*, 126 F.2d 521 ..... 9, 15

Maryland & District of Columbia Rifle & Pistol Association v. *Washington*, 442 F.2d 123 8

Merrill Lynch, Pierce, Fenner & Smith, Inc. v. *Curran*, No. 80-203 (May 3, 1982) 11

Milhouse v. *Levi*, 548 F.2d 357 ..... 9, 10

New York Central R.R. v. *White*, 243 U.S. 188 9

North Haven Board of Education v. *Bell*, No. 80-986 (May 17, 1982) 11

Reichman v. *Franklin Simon Corp.*, 392 A.2d 9 17

Saxbe v. *Bustos*, 419 U.S. 65 11

Thomas v. *Washington Gas Light Co.*, 448 U.S. 261 ..... 9, 16

Whalen v. *United States*, 445 U.S. 684 7

Constitution and statutes:

United States Constitution:

Article I:

Section 8, Clause 17 15

Section 8, Clause 18 (Necessary and Proper Clause) 15

Section 10 4

Article III 15

Page

Constitution and statutes—Continued:

Act of May 17, 1928, ch. 612, 45 Stat. 600, D.C. Code Ann. §§ 36-501 *et seq.* (1973 & Supp. 1978) 1-2

§ 36-503 (Supp. 1978) 15

District of Columbia Administrative Procedure Act, D.C. Code Ann. § 1-1510 (1981) 16

District of Columbia Court Reform and Criminal Procedure Act, Pub. L. No. 91-358, 84 Stat. 475, D.C. Code Ann. §§ 11-101 *et seq.* (1981) 9, 17

§ 11-921(a) 16

District of Columbia Self-Government and Governmental Reorganization Act ("Home Rule Act"), Pub. L. No. 93-198, 87 Stat. 774, codified in part in D.C. Code Ann. §§ 1-201 *et seq.* (1981 & Supp. 1982) 3

Title I:

Section 102(a), D.C. Code Ann. § 1-201(a) 3, 5, 7, 12

Section 102(b), D.C. Code Ann. § 1-201(b) 3

Title II 3, 12, 13

Section 204(c), 87 Stat. 783-784 3

Title III 3, 13

Section 302, D.C. Code Ann. § 1-204 ..... 4, 7

Title IV 3, 13

Page

Constitution and statutes—Continued:

Title VI 3, 13, 14

Section 601, D.C. Code Ann. § 1-206 ..... 5, 12
Section 602, D.C. Code Ann. § 1-233 4
Section 602(a), D.C. Code Ann. § 1-233(a) 4
Section 602(a)(3), D.C. Code Ann. § 1-233(a)(3) 7, 10, 11, 12, 14, 15, 16
Section 602(a)(4), D.C. Code Ann. § 1-233(a)(4) 7, 16
Section 602(a)(8), D.C. Code Ann. § 1-233(a)(8) 7, 17
Section 602(b), D.C. Code Ann. § 1-233(b) 4, 7, 17
Section 602(c), D.C. Code Ann. § 1-233(c) (& Supp. 1982) 5, 11

Title VII 3, 13

Section 717(b), D.C. Code Ann. § 1-208(b) 12
Section 771, 87 Stat. 836 13

Federal Employees' Compensation Act, 5 U.S.C. 8101 (& Supp. V) *et seq.* 2

5 U.S.C. 8101(1)(D) 2
5 U.S.C. 8139 2

Longshoremen's and Harbor Workers' Compensation Act of 1927, 33 U.S.C. (& Supp. V) 901 *et seq.* 2

33 U.S.C. 918(a) 2
33 U.S.C. 919(a)-(c) 2
33 U.S.C. (Supp. V) 919(d) 2

Page

Constitution and statutes—Continued:

33 U.S.C. 921(a) 16
33 U.S.C. (& Supp. V) 921(b) 2
33 U.S.C. 921(c) 2
33 U.S.C. 921(d) 2, 16
33 U.S.C. 939 2

18 U.S.C. 4082 9

District of Columbia Comprehensive Merit Personnel Act of 1978, D.C. Code Ann. §§ 1-624 *et seq.* (1981) 3

District of Columbia Workers' Compensation Act of 1979, D.C. Code Ann. §§ 36-301 *et seq.* (1981) 5

Section 46, 27 D.C. Reg. 2541 (1980) 5, 12

D.C. Law 4-161, 29 D.C. Reg. 1179 (1982) 5

Miscellaneous:

118 Cong. Rec. (1972):

p. 36382 11
p. 36386 11

119 Cong. Rec. 22947 (1973) 7

126 Cong. Rec. :

pp. H745-H747 (daily ed. Feb. 7, 1980) 11
p. S6339 (daily ed. June 5, 1980) 11

27 D.C. Reg. 2974 (1980) 5

H.R. Rep. No. 859, 69th Cong., 1st Sess. (1926) 10

Page

Miscellaneous—Continued:

H.R. Rep. No. 93-482, 93d Cong., 1st Sess. (1973) 3, 7, 9, 10, 13

Staff of House Comm. on the District of Columbia, 93d Cong., 2d Sess., *Home Rule for the District of Columbia 1973-1974: Background and Legislative History of H.R. 9056, H.R. 9682 and Related Bills Culminating in the District of Columbia Self-Government and Governmental Reorganization Act* (Comm. Print 1974) 13

S. Rep. No. 852, 70th Cong., 1st Sess. (1928) 2, 10

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BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

This brief is filed in response to the Court's invitation to the Solicitor General to express the views of the United States.

STATEMENT

1. Private sector employees in the District of Columbia were first covered by a workers' compensation program in 1928, when Congress passed the Act of May 17, 1928, ch. 612, 45 Stat. 600, codified at D.C. Code Ann. §§ 36-501

et seq. (1973 & Supp. 1978) ("the 1928 Act"). That statute applied the provisions of the Longshoremen's and Harbor Workers' Compensation Act of 1927 ("LHWCA"), 33 U.S.C. (& Supp. V) 901 *et seq.*, to non-maritime private sector employees in the District of Columbia.[1] At the time the 1928 Act was passed, employees of the District of Columbia government already were covered by a workers' compensation program under the terms of the Federal Employees' Compensation Act, 5 U.S.C. 8101 *et seq.* See 5 U.S.C. 8101(1)(D), 8139.

The Secretary of Labor has statutory responsibility for administration of the LHWCA (see 33 U.S.C. 939). The 1928 Act provided that the Secretary also would administer workers' compensation claims by non-maritime private sector employees in the District pursuant to the provisions of the LHWCA. Thus, such employees filed claims with a deputy commissioner of the Department of Labor (33 U.S.C. 919(a)-(c)). Following the deputy commissioner's recommendation, either the employee or the employer could request a hearing before an administrative law judge, whose order could be reviewed in turn by the Benefits Review Board of the Department of Labor (33 U.S.C. (& Supp. V) 919(d), 921(b)). Persons adversely affected by a final order of the Board could appeal to the United States court of appeals for the circuit in which the injury occurred (33 U.S.C. 921(c)). In addition, a beneficiary of a compensation award or the deputy commissioner could seek enforcement of the order in the federal district court for the district in which the injury occurred or in which the employer had his principal place of business or maintained an office (33 U.S.C. 921(d); see also 33 U.S.C. 918(a)).

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[1]Earlier efforts by Congress to enact such a program had failed because of disagreement over the appropriate system of insurance and plan of administration. S. Rep. No. 852, 70th Cong., 1st Sess. 1 (1928).

2. In 1973, Congress enacted the District of Columbia Self-Government and Governmental Reorganization Act, Pub. L. No. 93-198, 87 Stat. 774, codified in part at D.C. Code Ann. §§ 1-201 *et seq.* (1981) ("Home Rule Act"). That Act has two distinct purposes. First, Congress provided the citizens of the District of Columbia with an opportunity to approve a charter for self government, in order to "relieve Congress of the burden of legislating upon essentially local District matters." D.C. Code Ann. §§ 1-201(a) (1981). Titles III, IV, and VI and portions of Title VII of the Home Rule Act provide for such self-government upon approval by the citizens. Second, in order to implement certain reorganization recommendations made by the Commission on the Organization of the Government of the District of Columbia (Nelsen Commission), Congress transferred authority over specified local matters from the federal government to the pre-home rule government. See H.R. Rep. No. 93-482, 93d Cong., 1st Sess. 4-6 (1973). This transfer was accomplished under Title II of the Home Rule Act and was to occur "irrespective of whether the charter * * * is accepted." D.C. Code Ann. § 1-201(b) (1981). Among the functions transferred to the District government under Title II was the authority, previously exercised by the Secretary of Labor under the Federal Employees' Compensation Act, to process workers' compensation claims of District of Columbia government employees. Home Rule Act, Section 204(e), 87 Stat. 783-784.[2]

In 1974, the citizens of the District of Columbia voted to adopt the self-government charter provided for in the Home Rule Act. Under the charter, Congress delegates to the District broad legislative authority over "all rightful

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[2]The District of Columbia Comprehensive Merit Personnel Act of 1978, D.C. Code Ann. §§ 1-624.1 *et seq.* (1981), accomplished the transfer of authority with respect to claims of District of Columbia government employees.

subjects of legislation within the District." D.C. Code Ann. § 1-204 (1981). This legislative power is subject to certain enumerated limitations and to the specific restrictions imposed upon the states by Article I, Section 10 of the United States Constitution. The enumerated limitations on the power of the Council of the District of Columbia found at D.C. Code Ann. § 1-233 (1981), include the following:

> (a) The Council shall have no authority to pass any act contrary to the provisions of this Act except as specifically provided in this Act, or to:
>
> * * * * *
>
> (3) Enact any act, or enact any act to amend or repeal any Act of Congress, which concerns the functions or property of the United States or which is not restricted in its application exclusively in or to the District;
>
> (4) Enact any act, resolution, or rule with respect to any provision of Title 11 [of the District of Columbia Code] (relating to organization and jurisdiction of the District of Columbia courts);
>
> * * * * *
>
> (8) Enact any act or regulation relating to the United States District Court for the District of Columbia or any other court of the United States in the District other than the District courts, or relating to the duties or powers of the United States Attorney or the United States Marshal for the District of Columbia[.]
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> * * * * *
>
> (b) Nothing in this Act shall be construed as vesting in the District government any greater authority over the

> National Zoological Park, the National Guard of the District of Columbia, the Washington Aqueduct, the National Capital Planning Commission, or, except as otherwise specifically provided in this Act, over any federal agency, than was vested in the Commissioner prior to January 2, 1975.

Congress retains ultimate legislative authority over the District pursuant to Article I, Section 8, Clause 17 of the United States Constitution, which vests Congress with plenary legislative authority for the District of Columbia. D.C. Code Ann. §§ 1-201(a), 1-206 (1981).

3. On May 6, 1980, the City Council passed the District of Columbia Workers' Compensation Act of 1979, D.C. Code Ann. §§ 36-301 *et seq.* (1981) ("the 1979 Act"). The 1979 Act establishes a workers' compensation program for private sector employees in the District. Under the Act claims are filed with District officials, and judicial review and enforcement of the Mayor's compensation awards may be sought in the local District of Columbia courts. Section 46 of the 1979 Act, 27 D.C. Reg. 2541 (1980), expressly repeals the 1928 Act of Congress.

After the Mayor signed the Act, it was transmitted to Congress for the 30-day layover period prescribed by D.C. Code Ann. § 1-233(c) (1981). Since there was no concurrent resolution of disapproval, the Act became law on July 1, 1980. 27 D.C. Reg. 2974 (1980). The Act became effective two years later, on July 26, 1982, pursuant to D.C. Law 4-161, 29 D.C. Reg. 1179 (1982). All claims arising after that date must be filed with the appropriate District officials, rather than with the Department of Labor.

4. On July 15, 1980, petitioner Greater Washington Central Labor Council, AFL-CIO, along with three private sector employees, brought suit against the District of Columbia in the Superior Court of the District of Columbia

seeking a declaratory judgment that the 1979 Act was invalid and an injunction against its enforcement. In September 1980, the Superior Court, in a bench decision (Pet. App. 19a-33a),[3] ruled that the 1979 Act was null and void. The court acknowledged that "the grant of legislative powers to the District of Columbia Council in the Home Rule Act has been made in broad terms" (*id.* at 25a), and that, in the absence of an existing workers' compensation law previously enacted by Congress, it could readily be concluded that "the Council had the power to fill the vacuum by appropriate legislation" (*id.* at 26a). However, the court found it significant that Congress had not repealed the 1928 Act, although it had provided expressly for transfer of the workers' compensation program for District of Columbia government employees (*id.* at 27a-29a). The court held that the 1979 Act violated various enumerated limitations on the Council's authority (*id.* at 29a-31a).

The District of Columbia Court of Appeals reversed (Pet. App. 35a-57a),[4] concluding that passage of the 1979 Act was within the legislative authority of the City Council. The court of appeals concluded that the express transfer by Congress of certain functions, including the workers' compensation program for District of Columbia government employees, without a concurrent express transfer of the private sector workers' compensation program, did not indicate any intent to prohibit the Council from legislating on the latter subject (*id.* at 44a). The court of appeals also held that passage of a local workers' compensation statute did not violate any of the enumerated limitations on the

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[3]"Pet. App." refers to the appendix to the petition in No. 82-116.

[4]On appeal, petitioner Food and Allied Services Trades Council of Metropolitan Washington was permitted to intervene on behalf of petitioner Greater Washington Central Labor Council.

Council's authority found in the Home Rule Act, D.C. Code Ann. §§ 1-233(a)(3), (4), (8), and (b) (1981) (Pet. App. 45a-52a).

DISCUSSION

The District of Columbia Court of Appeals correctly held that the Council of the District of Columbia possessed authority to enact a local workers' compensation system designed to replace an earlier congressional enactment establishing a program of workers' compensation for private sector employees in the District of Columbia. The decision below relates to a local matter and has no appreciable effect on operations of the federal government. Thus, in light of "the practice of [this] Court to defer to the decisions of the courts of the District of Columbia on matters of exclusively local concern" (*Whalen* v. *United States*, 445 U.S. 684, 687 (1980)), we believe the decision does not warrant further review.

1. The court of appeals correctly held that workers' compensation for private sector employees in the District of Columbia is a "rightful subject[] of legislation" (D.C. Code Ann. § 1-204 (1981)) for the City Council. Except for certain enumerated limitations (see pages 4-5, *supra*), Congress intended that the Council could legislate "to the *greatest extent possible*, consistent with the constitutional mandate, [in order to] relieve Congress of the burden of legislating upon essentially local District matters." D.C. Code Ann. § 1-201(a) (1981) (emphasis added). Members of Congress noted that the Home Rule Act would "relieve[] the Congress from the time-consuming and burdensome task of sitting as City Council." H.R. Rep. No. 93-482, 93d Cong., 1st Sess. 2 (1973). They meant for the "very essence of local government" to be handled by the District. 119 Cong. Rec. 22947 (1973) (statement of Sen. Eagleton, Chairman of the Senate Committee on the District of Columbia).

This Court has concluded that the "rightful subjects of legislation" that may be delegated to the District of Columbia are as broad as the police power of a state. *District of Columbia* v. *John R. Thompson Co.*, 346 U.S. 100, 110 (1953). In *Thompson*, the Court upheld the validity of District legislation prohibiting discrimination in public accommodations, passed by a local District body pursuant to an earlier delegation of legislative authority over "all rightful subjects of legislation." *Id.* at 102-105. The Court analogized Congress's grant of authority to the District to a federal grant of legislative power to territorial governments and to the grant of self-government by a state to its municipal corporations. *Id.* at 105-108. The Court concluded (*id.* at 109):

> It would seem then that on the analogy of the delegation of powers of self-government and home rule both to municipalities and to territories there is no constitutional barrier to the delegation by Congress to the District of Columbia of full legislative power, subject of course to constitutional limitations to which all lawmaking is subservient and subject also to the power of Congress at any time to revise, alter, or revoke the authority granted.

The United States Court of Appeals for the District of Columbia Circuit, in upholding Council regulations banning geographical discrimination with respect to sale of insurance, has stated that "[w]hen Congress delegates its police power to the local government, that entity's powers become as broad as those of Congress, limited only by the Constitution or specific Congressional enactment." *Firemen's Insurance Co.* v. *Washington*, 483 F.2d 1323, 1328 (1973). See also *Maryland & District of Columbia Rifle & Pistol Association* v. *Washington*, 442 F.2d 123 (D.C. Cir. 1971) (District of Columbia Council had authority to promulgate gun control code). In this case Congress expressly

premised its broad delegation of powers under the Home Rule Act on the *Thompson* and *Firemen's Insurance Co.* decisions. See H.R. Rep. No. 93-482, *supra*, at 8, 58-63.

There can be little doubt that Congress's broad delegation of authority to the District in the Home Rule Act included the power to enact workers' compensation legislation. Such legislation traditionally has been viewed as a matter of local concern, falling within the police power of states. See *New York Central R R.* v. *White*, 243 U.S. 188, 202-207 (1917). Courts have regarded the 1928 Act as local in nature, since it was passed by Congress to provide private sector District employees with the same type of protection that most states were providing. See *Thomas* v. *Washington Gas Light Co.*, 448 U.S. 261, 266 n.7, 277 (1980) (plurality opinion); *Cardillo* v. *Liberty Mutual Insurance Co.*, 330 U.S. 469, 476 (1947); *Director, Office of Workers' Compensation Programs* v. *National Van Lines, Inc.*, 613 F.2d 972, 979 n.20 (D.C. Cir. 1979), cert. denied, 448 U.S. 907 (1980) (the 1928 Act is "essentially parallel to a state workmen's compensation statute"); *Gudmundson* v. *Cardillo*, 126 F.2d 521, 525 (D.C. Cir. 1942).[5] Congress itself recognized

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[5]See also *Fonseca* v. *Prann*, 282 F.2d 153, 156-157 (1st Cir. 1960), cert. denied, 365 U.S. 860 (1961) (upholding a workers' compensation law enacted by the territory of Puerto Rico as a valid exercise of congressionally delegated authority).

Petitioners' reliance on *Milhouse* v. *Levi*, 548 F.2d 357 (D.C. Cir. 1976), is misplaced. That case held that the Attorney General retained authority to regulate the furlough program at Lorton Reformatory, a prison for District of Columbia offenders, since that authority had not been expressly transferred to the District under either the District of Columbia Court Reform and Criminal Procedure Act, Pub. L. No. 91-358, 84 Stat. 475, D.C. Code Ann. §§ 11-101 *et seq.* (1981), or the Home Rule Act. However, the congressional enactment that conferred the authority on the Attorney General, 18 U.S.C. 4082, was not confined to the District of Columbia, but applied to all prisoners within the custody of the Attorney General. See page 12, *infra*. In addition, the

the local nature of workers' compensation legislation when it passed the 1928 Act. See S. Rep. No. 852, 70th Cong., 1st Sess. 2 (1928) (legislation intended to afford protection to workers similar to that provided in "various modern state laws"); see also H.R. Rep. No. 859, 69th Cong., 1st Sess. 1 (1926) (legislation expected to meet "peculiar" conditions existing in the District of Columbia).

Members of Congress have acknowledged expressly that the delegation of authority to the District under the Home Rule Act would include the power to enact a local workers' compensation scheme. During debate on the 1972 amendments to the LHWCA, Representative Daniels, Chairman of the Select Subcommittee on Labor (which has jurisdiction over the LHWCA), stated that it was the Committee's view that "when the District of Columbia has home rule, [it]

District apparently had not enacted its own regulations with respect to the Lorton furlough program (see 548 F.2d at 362-363 n.13), so that there was no issue before the court as to whether such an effort would have constituted a "rightful subject of legislation." Rather, the question was whether the Court Reform Act or the Home Rule Act of their own force operated to transfer authority to the District. Finally, since the United States held legal title to the land on which the prison complex is located (548 F.2d at 359 n.5), *Milhouse* might be said to involve the question of authority over federal property with respect to which the District's legislative authority is limited. See D.C. Code Ann. § 1-233(a)(3)(1981).

Petitioners also cite (Pet. 11-12; 82-146 Pet. 8-9 n.9) *District of Columbia* v. *Washington Home Ownership Council, Inc.*, 415 A.2d 1349 (D.C. 1980) (en banc) (successive emergency legislation relating to condominium and cooperative conversion); *Bishop* v. *District of Columbia*, 411 A.2d 997 (D.C. 1980) (en banc) (tax on nonresident unincorporated professionals); *Capitol Hill Restoration Society, Inc.* v. *Moore*, 410 A.2d 184 (D.C. 1979) (jurisdiction of District of Columbia Court of Appeals); and *Apartment & Office Building Association* v. *Washington*, 343 A.2d 323 (D.C. 1975) (rent control regulations). These cases, unlike the present case, all involved actions by the City Council that contravened express limitations found in the Home Rule Act.

can provide for [its] own compensation act for the people here in the District of Columbia." 118 Cong. Rec. 36382 (1972); see also 118 Cong. Rec. 36386 (1972) ("Questions and Answers," stating that "[b]ecause the District of Columbia has no home rule, it is the responsibility of Congress to enact compensation laws"). The legislative history of the Home Rule Act does not contain any statement suggesting that Congress intended to prevent the City Council from legislating on private sector workers' compensation, once the self-government charter was approved by the voters. After the 1979 Act was passed by the City Council and signed by the Mayor, the measure was sent to Congress for the 30-day layover period prescribed by D.C. Code Ann. § 1-233(c) (1981). Members of Congress expressly commended the passage of the Act. For example, on June 5, 1980, during the layover period, Senator Morgan congratulated the City Council for enacting a local workers' compensation program. 126 Cong. Rec. S6339 (daily ed. June 5, 1980). See also 126 Cong. Rec. H745-H747 (daily ed. Feb. 7, 1980) (statement of Rep. Erlenborn). Neither House of Congress took any action to disapprove the Act.[6] Congress's failure to overturn the Act or to declare it ultra vires suggests that it recognized the validity of the City Council's action. See *North Haven Board of Education* v. *Bell*, No. 80-986 (May 17, 1982), slip op. 21-23; *Merrill Lynch, Pierce, Fenner & Smith, Inc.* v. *Curran*, No. 80-203 (May 3, 1982), slip op. 28 n.66; *Saxbe* v. *Bustos*, 419 U.S. 65, 74 (1974).[7]

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[6]Neither the Senate Committee nor the House Committee reported a resolution of disapproval. We have been unable to find any evidence that a resolution of disapproval was even introduced.

[7]The Superior Court concluded (Pet. App. 19a-34a) that the 1979 Act was null and void in part because Congress itself had not repealed the 1928 Act. However, the Home Rule Act gives the Council the authority to amend or repeal an Act of Congress, so long as it does not concern federal functions or property and is restricted in its application

2. Petitioners contend (Pet. 13-14; 82-146 Pet. 9-15) that Congress's express transfer of responsibilities relating to workers' compensation for District of Columbia government employees in Title II of the Home Rule Act and the absence of a concurrent express transfer of authority over private sector workers' compensation indicates that the Council is barred from legislating on the latter subject. As the court of appeals noted (Pet. App. 44a), transfer of the workers' compensation program for public employees may have required explicit congressional legislation since those functions had been prescribed under the Federal Employees' Compensation Act, which does not apply exclusively to the District of Columbia (see D.C. Code Ann. § 1-233(a)(3) (1981)), whereas "the existing workmen's compensation program for private employees, the Workmen's Compensation Act of 1928, is a congressionally enacted local statute that deals exclusively with District of Columbia matters. Consequently, no express congressional legislation is required to effect the transfer" (Pet. App. 44a).[8]

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exclusively in or to the District. See D.C. Code Ann. § 1-233(a)(3) (1981). See also § 1-208(b). Section 46 of the 1979 Act, 27 D.C. Reg. 2541 (1980), expressly repeals the 1928 Act. Of course, Congress is free to withdraw the Council's authority at any time and to reimpose a workers' compensation scheme enacted by Congress itself. See D.C. Code Ann. §§ 1-201(a), 1-206 (1981). However, Congress has not chosen to do so.

The record in this case includes a short memorandum by the Solicitor of Labor, written in 1980, expressing the view that the City Council lacked authority to enact a workers' compensation scheme covering private sector employees in the absence of an express repeal by Congress of the 1928 Act. See 82-146 Pet. App. 41a-42a. That memorandum, which was prepared for internal purposes, was written within a relatively short time frame and without extensive research. This brief expresses the current, and more fully considered, views of the Department of Labor on this subject.

[8]The 1979 Act does not cover workers' compensation claims of District of Columbia maritime workers, who continue to be covered under the federal LHWCA.

The enumerated powers in Title II of the Home Rule Act do not serve as limitations on the general powers granted in Titles III and IV of the Act. Under Title II, Congress transferred certain functions to the pre-home rule government (including those functions relating to workers' compensation for District government employees), regardless of whether the voters chose to accept the self-government charter.[9] The self-government provisions in Titles III and IV provide a separate grant of general legislative authority subject to specified limitations. By delegating authority over all "rightful subjects of legislation" under those titles, Congress was able to avoid the burdensome task of enumerating each area in which the District could act. See the discussion during the House subcommittee markup, in Staff of House Comm. on the District of Columbia, 93d Cong., 2d Sess., *Home Rule for the District of Columbia 1973-1974: Background and Legislative History of H.R. 9056, H.R. 9682 and Related Bills Culminating in the District of Columbia Self-Government and Governmental Reorganization Act* 211 (Comm. Print 1974) ("*Home Rule History*"). Thus, it is clear that Congress did not intend that transfer of one type of power under Title II would indicate an intent not to transfer another sort of power under the broader delegation of Titles III and IV.[10]

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[9]The legislative history makes clear that Title II of the Home Rule Act was to take effect prior to the date on which the self-government measures (Titles III, IV and VI and portions of Title VII) took effect and regardless of whether the charter was ratified by local voters. H.R. Rep. No. 93-482, *supra*, at 2, 5; see also Section 771 of the Home Rule Act, 87 Stat. 836.

[10]Petitioner Food and Allied Services Trade Council notes (82-146 Pet. 11) that Congress also expressly transferred to the District under Title II of the Home Rule Act the voluntary apprenticeship program, which had been established by a "local" statute. However, transfer of one local program under Title II, which was to take effect regardless of whether District voters approved a self-government charter, does not suggest that Congress intended to preclude the Council from legislating

3. Petitioners argue that passage of the 1979 Act violates certain limitations placed on the City Council under Title VI of the Home Rule Act. They contend (Pet. 23-25; 82-146 Pet. 15-25) that the 1979 Act violates D.C. Code Ann. § 1-233(a)(3) (1981), which prohibits the City Council from enacting any law "which concerns the functions or property of the United States or which is not restricted in its application exclusively in or to the District." The court of appeals correctly rejected this argument.

As the court of appeals observed (Pet. App. 45a), "Congress intended in § 1-233(a)(3) to withhold from local officials the authority to affect or to control decisions made by federal officials in administering federal laws that are national in scope as opposed to laws that relate solely to the District of Columbia." As stated in the D.C. Executive Branch Proposal for Home Rule Organic Act (*reprinted in Home Rule History, supra,* at 182):

> The functions reserved to the federal level would be those related to federal operations in the District and to property held and used by the Federal Government for conduct of its administrative, judicial, and legislative operations; and for the monuments pertaining to the nation's past. The functions would include physical planning of these federal areas, construction and maintenance of federal buildings, and administration of federal park areas * * *.

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with respect to other local programs once the charter, with its broad delegation of legislative authority, had been approved. There is no suggestion in the Home Rule Act or its legislative history that Congress anticipated that it would be required to repeal expressly each of the many pieces of local legislation it had enacted in the past before the Council would be free to legislate on the full range of local matters, or before the Council's enactments could take effect. Such a procedure would be contrary to the express desire of Congress to extricate itself from the business of local legislation. See page 7, *supra*.

The 1979 Act, which involves an essentially local matter, does not infringe on a federal function of the sort referred to in Section 1-233(a)(3).

While the Department of Labor administered the District's workers' compensation system prior to 1982, both for historical reasons and as a matter of convenience, that system related solely to the District. The fact of administration by a federal agency did not in itself "transform the function into a 'function of the United States' for purposes of § 1-233(a)(3)" (Pet. App. 45a). The LHWCA, which set up a federal program of workers' compensation for maritime workers administered by the Department of Labor, and the 1928 Act, which governed a program administered in the same fashion but applicable only to the District of Columbia, are "wholly separate and distinct;" the former was enacted pursuant to the Necessary and Proper Clause (Article I, Section 8, Clause 18) in aid of the judicial powers of Article III, while the latter was passed under the authority of Article I, Section 8, Clause 17 of the Constitution. See *Gudmundson* v. *Cardillo, supra,* 126 F.2d at 525.[11]

The court of appeals correctly concluded that "[t]he repeal of [the 1928 Act] by the Council has no impact on the functions of the United States Department of Labor in the administration of the Longshoremen's Act as it relates to the maritime industry nationally" (Pet. App. 48a n.2). Obviously, the number of claims processed under the

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[11]Beginning in 1973, District of Columbia funds were authorized to be appropriated "as may be necessary to pay the expenses incurred by the United States Department of Labor in the administration of [the 1928 Act]." D.C. Code Ann. § 36-503 (Supp. 1978). District funds have paid most of the costs of operating District 40 of the Department's Office of Workers' Compensation Programs, which serves the District of Columbia. Federal appropriations finance other personnel (such as administrative law judges) and services connected with the processing of claims of private sector employees of the District of Columbia.

LHWCA procedures, primarily in District 40 (serving the District of Columbia), will decrease as a result of the 1979 Act. But the Department will continue to administer the LHWCA as a national law in the same manner as before the 1979 Act took effect. Thus, the 1979 Act does not violate the limitation placed on the City Council in D.C. Code Ann. § 1-233(a)(3) (1981).[12]

4. Petitioners' other main contention (Pet. 16-21; 82-146 Pet. 25-28) is that the 1979 Act violates D.C. Code Ann. § 1-233(a)(4) and (8) (1981), which prohibit the City Council from enacting any law affecting the organization or jurisdiction of the District of Columbia courts or relating to the United States courts. As the court of appeals concluded (Pet. App. 49a-52a), the 1979 Act does not alter the jurisdiction of the courts, but merely provides that enforcement or judicial review of compensation orders shall be had pursuant to the existing jurisdiction of the local courts. The District of Columbia courts have jurisdiction to enforce orders of the Mayor pursuant to D.C. Code Ann. § 11-921(a)(1981) and to review contested administrative cases under D.C. Code Ann. § 1-1510 (1981). The City Council was not precluded from enacting legislation, otherwise authorized under the Home Rule Act, that provides for judicial recourse in accordance with the local courts' existing jurisdiction. Moreover, in 1970 the District of Columbia

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[12]Petitioners argue (Pet. 24-25; 82-146 Pet. 20-22) that the 1928 Act was federal in nature because it had "extraterritorial" application, citing, *inter alia*, the fact that judicial proceedings under the Act were to take place in the district or circuit in which the injury occurred (see 33 U.S.C. 921(a) and (d)), which was not always the District of Columbia, and that judicial interpretations of the 1928 Act had nationwide application for purposes of the LHWCA. However, these "extraterritorial" features were not central to the 1928 Act and did not change its essentially local nature. Most state workers' compensation statutes also have a limited "extraterritorial" effect. See, *e.g.*, *Thomas* v. *Washington Gas Light Co.*, *supra*, 448 U.S. at 274-275 (plurality opinion).

courts were vested with general jurisdiction over local matters by the District of Columbia Court Reform and Criminal Procedure Act, Pub. L. No. 91-358, 84 Stat. 475, D.C. Code Ann. §§ 11-101 *et seq.* (1981). See *Andrade* v. *Jackson*, 401 A.2d 990, 992-993 (D.C. 1979); *Reichman* v. *Franklin Simon Corp.*, 392 A.2d 9, 12 (D.C. 1978) (1970 Act was designed to relieve federal courts of long-standing local responsibilities and to give local courts powers analogous to those of state courts). Thus, the 1979 Act properly placed judicial control over local workers' compensation matters in the local courts. The federal courts continue to exercise jurisdiction over cases that arise under the LHWCA and to operate as they have in the past. The removal of certain local cases from the coverage of the LHWCA therefore cannot be considered to be an act relating to the federal courts within the meaning of D.C. Code Ann. § 1-233(a)(8) (1981).[13]

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[13]The Superior Court suggested (Pet. App. 30a) that the 1979 Act violates D.C. Code Ann. § 1-233(b)(1981), which prohibits the Council from exercising any greater authority over any federal agency than was vested in the Commissioner of the District of Columbia prior to 1975. The transfer of certain functions that are local in nature from the Department of Labor to the District is simply an implementation of home rule and does not constitute an "exercise of authority" over the Department within the meaning of that provision (which obviously was not intended to prevent home rule from being effectuated).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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